No. 00-8452

(9)

Supreme Court, U.S.
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In The

# Supreme Court of the United States

DARYL RENARD ATKINS,

*Petitioner,*

v.

COMMONWEALTH OF VIRGINIA,

*Respondent.*

**On Writ Of Certiorari To The Supreme Court Of Virginia**

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| Name of Paper | Date Filed |
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| Indictments Nos. 1-6 (Just No. 1) | 11-19-96 |
| EXHIBIT (letter to Mr. Saunders) (filed in open court) | 10-14-97 |
| Exhibits | 05/06/98 |
| TRANSCRIPTS (2/10/98, 2/12/98, 2/13/98, 2/14/98, 4/28/98) | 06/16/98, 05/05/98, 04/24/98, 05/21/98, 05/19/98, 06/09/98 |
| PSYCHOLOGICAL EVALUATION (Dr. Brown) | 07/06/99 |
| Presentence Report | 10/26/99 |
| Exhibits | 08/18/99 |

VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF YORK AND THE CITY OF POQUOSON

NOVEMBER 19, 1996

| | | |
|---|---|---|
| COMMONWEALTH OF VIRGINIA, Plaintiff, | : | A CLASS 1 FELONY DOCKET NO. 8229 INDICTMENT NO. 1 |
| v. | : | |
| DARYL RENARD ATKINS, DOB: 11-06-77 SS#: 223-47-0073, Defendant. | : | |

THE GRAND JURY CHARGES THAT:

On or about August 17, 1996, in the County of York, Virginia, DARYL RENARD ATKINS did feloniously, willfully, deliberately, and premeditatedly kill and murder ERIC MICHAEL NESBITT in the commission of robbery while armed with a deadly weapon.

§ 18.2-31, subparagraph 4, Code of Virginia (1950), as amended Capital murder of victim of robbery

(✓) A TRUE BILL

( ) NOT A TRUE BILL

/s/ Fay Moone
FOREMAN

WITNESS: Inv. F.T. Lyons
York County Sheriff's Department



VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF YORK

| | | |
|---|---|---|
| COMMONWEALTH OF VIRGINIA VS DARYL RENARD ATKINS | : | CASE NO. 96-8229 (6) |

Stenographic report of all the testimony, together with all the motions, objections and exceptions on the part of the respective parties, the action of the Court in respect thereto, and all other incidents during the second day of trial in the above-styled cause, held in the Circuit Court for the County of York at Yorktown, Virginia, on February 10, 1998, before the Honorable Prentis Smiley, Jr., Judge of said Court, and jury.

—oOo—

[150] Phillip E. Atkins

with an X, please.

THE COURT: Okay. Thank you, sir.

BY MR. HAHN:

Q Mr. Atkins, about – are you familiar with where Tower Road is off of Crafford Road?

A Yes.

Q About how far away is your home from where Tower Road intersects with Crafford Road?

A About four blocks.

Q Okay. Can you give it to us in some type of distance, in mileage or yards?

A From Crafford Road, I'd say around – around four blocks.

Q Okay. Now, do you know Daryl Atkins?

A Daryl?

Q Yes, sir.

A Yes.

Q How do you know him? Is he related to you?

A That's my son's son.

Q So he's your grandson?

A I'm the grandfather.

THE COURT: Counsel – ladies and gentlemen of the jury, I'm going to ask that you retire to the jury room at this time. Do not begin any

* * *

[156] And I got my son to help me to – my other two sons, Phillip and Ronnie, helped me on the farm. And he come with – he come with his father.

MR. HAHN: I have no further questions of this witness, your Honor.

THE COURT: Do you wish to examine the witness?

MR. ROGERS: Just one.



CROSS-EXAMINATION

BY MR. ROGERS:

Q Mr. Atkins, about how long ago was that, sir?

A Oh, that's been about – about three years, four years, something like that.

MR. ROGERS: Three years. Thank you, sir, no other questions.

THE COURT: Any further need for Mr. Atkins?

MR. ROGERS: No, sir, he can be excused.

THE COURT: Mr. Hahn, do you wish to call him any further?

MR. HAHN: I do not, your Honor.

* * *

---

[193] Investigator Frederick Troy Lyons

west of the body. There was one casing that was directly underneath the body and there were two casings that were found approximately eight to ten feet off the feet of the body in the area where there were some tire tracks on the loose pavement. And. those casings were embedded in the tire track.

MS. ADDISON: Your Honor, I'd ask that Commonwealth's Exhibits 10 through 18 be admitted into evidence and published to the jury.

MR. ROGERS: No objection, your Honor.

THE COURT: All right. They have been previously marked.

MS. ADDISON: Yes, sir.

THE COURT: Mark them filed as Commonwealth's Exhibits 10 through 18, inclusive, and make them an exhibit, part of the record.

(Commonwealth's Exhibits Number 10 through 18 were received in evidence.)

THE COURT: I'll let you publish them as soon as I initial them. You may go ahead.

BY MS. ADDISON:

Q What was done next in your investigation, Investigator Lyons?

A The casings were collected, assigned

* * *

[198] on August 17th, 1996 for two hundred dollars, which overdrew his bank account.

Q Did you have any further contact with Crestar Bank in the investigation?

A On the 21st of August I received a phone call from the Crestar Bank. After receiving that phone call, I went to their security office in Norfolk, where I was given several copies of still photographs of the transaction Mr. Nesbitt had conducted on August 16th at the ATM machine at the Coliseum Mall Branch of Crestar Bank, and also copies of still photographs from the transaction that occurred shortly after midnight on August 17th of



1996. And I also received the video tape of those transactions.

Q And what, if anything, did you do with that video tape?

A Took the video tape back to our office. On the way back, I dropped off copies of the still photographs to the Hampton and Newport News Police Departments, in hopes of being able to identify the subjects that were in the vehicle with Mr. Nesbitt.

I then took the video tape back to our office, where I made multiple still photographs of captured images from the video tape of the transaction at the ATM machine with the other individuals in the vehicle

* * *

[203] This was a Saturday when we initially talked with the Crestar Bank people. The branches were closed, so they could not contact the branch until Monday. And that took a day through the courier service to get from Coliseum Crossing to their branch in Norfolk.

Q And what information did you receive in response to your request? You mentioned crime line calls.

A Yes, we received a number of crime line calls. Of those crime line calls, five of those calls identified the driver in the video as being William Alfredric Jones and also gave a location where he resided. One of the calls stated that a person that Mr. Jones runs with was a Daryl Atkins, who lived in the same apartment complex.

Q What happened next?

A Based on one of the calls that we received, we obtained an arrest warrant for William Jones in reference to this offense. We went to Mr. Jones' residence, that would be on the 21st – yes, that would have been on the 21st we went to Mr. Jones' residence, interviewed his father and his father's girlfriend.

Following that, we determined where Mr. Atkins lived, went to Mr. Atkins' residence, identified him and placed him under arrest.

* * *

[209] again, I've got to object to this. This is obviously the product of hearsay. It's not subject to any stipulation of the 13 or 14 we've made. And I object to it.

THE COURT: At this point, it's not hearsay. It may be a conclusion.

MR. ROGERS: Oh, it's a conclusion that is totally improper without the foundation being laid, your Honor, and we object to it.

THE COURT: I'll sustain the objection, pending proper foundation.

MR. ROGERS: Thank you, your Honor.

BY MS. ADDISON:

Q Did you subsequently take Mr. Atkins to the York County Jail?

A Yes, ma'am, we did.

Q And what, if anything, happened on that Wednesday, August 21st, in the investigation?



A I don't understand.

Q I'm sorry. Did you subsequently – did you get information regarding Mr. Nesbitt's truck at any point?

A Yes, we did. Approximately 20 minutes after Mr. Atkins was arrested, I received a page notifying me that Eric Nesbitt's truck had been found at the King James Motel in the City of Newport News.

[210] Q And what, if anything, had been done with that truck?

A I had previously, prior to this date, had coordinated with the Newport News Crime Scene Unit for them to assist us with the use of their alternate light source and their garage processing area, if and when we found this vehicle, for the purpose of processing it. I contacted Investigator Monty Willaford with our office, once I was notified the vehicle had been found, and requested that he get in contact with the Newport News Crime Scene Unit in reference to getting this vehicle processed.

Q To the best of your knowledge, was that actually done?

A Yes, it was. It was done that afternoon by Investigator Willaford and Detective Martin with the Newport News Police Department.

Q Did you subsequently also arrest William Jones in this matter?

A Yes, we did. We arrested Mr. Jones on the – I believe it was the – on August 22nd of 1996.

Q You said the truck was processed by Newport News. Did you become involved in the transportation of any of the evidence that was obtained from that truck?

* * *

[215] submitted Eric Nesbitt's blood-stained shirt. I submitted shoes that were recovered from Daryl Atkins' apartment that had a red stain in them. I submitted a blood sample that was drawn from Daryl Atkins.

Q Any other blood samples?

A When I got to the lab on August 28th to submit these items, I secured the blood sample drawn by the Medical Examiner of Eric Nesbitt's blood and submitted that, also.

Q Where did you take that from, the blood sample from Eric Nesbitt?

A I obtained it from the Medical Examiner's Office, which is in the basement of the Consolidated Laboratory Building in Norfolk.

Q Did you have occasion to have any further contact with Daryl Atkins on or about September 11th of 1996?

A Yes, I did. I accompanied Mr. Atkins, myself and Investigator Monty Willaford, to Mary Immaculate Hospital, where he underwent surgery to have the bullet removed from his leg.

Q And did you, in fact, witness that surgery?

A Yes, I did. I attended the surgery, was in the operating room. Dr. Boyd Haynes was the



* * *

[226] Investigator Frederick Troy Lyons – Cross

testimony, as I recall, Investigator Lyons, was that you got the ATM tape and the stills on the 21st of August of 1996, is that right?

A I misspoke on that. They were aired in the newspaper on the 21st. I received the item on the 20th, received the tape on the 20th and made the stills on the 20th.

Q Okay. Thank you. Okay, so then it was aired on the 21st?

A It was aired on the eleven o'clock news on the 20th and appeared in the newspaper and aired again on the 21st.

Q Okay, that would be the Daily Press, morning edition, on the 21st?

A Yes, sir.

Q Okay. Now, the – you testified that you arrested Mr. Atkins. That also occurred on the same day, is that right, August 21st?

A Yes, sir.

Q Okay. And at the time that you arrested him, you said that it was at an apartment, is that correct, at Sacramento?

A I believe the name of the apartment was Tidemill Apartments.

Q Right. But it's off of Sacramento

* * *

[229] Investigator Lyons? You're a nine-year veteran of the York County Police Department.

MS. ADDISON: I object. That's argumentative, and it's not a question.

THE COURT: Well, the unique part about this process is the lawyers get to ask the questions and the witness gets to answer. So I will permit the question, okay?

THE WITNESS: He didn't resist us or anything of that nature. I guess you could say he was, you know, he was cooperative in that he didn't resist or – or try to avoid anything.

BY MR. ROGERS:

Q And he made a detailed statement to you, did he not?

A Yes, sir.

Q Okay. And this was done on the 21st of August, 1996, at 3:30 p.m., is that correct, when it began?

A No, sir, it was earlier than 3:30.

Q Could you check your file? Excuse me, Investigator, do you have – Lyons, do you have the typed-up interview report –

MS. ADDISON: Your Honor, I'm going to object.

[230] MR. ROGERS: – of August 21, 1996?



THE COURT: There's an objection.

THE WITNESS: Yes, sir, I do.

THE COURT: There's an objection.

MS. ADDISON: I'm not sure where Mr. Rogers is going with this. We object to the admission of evidence regarding this statement as far as its content.

THE COURT: He didn't ask about the content. To my knowledge, he hasn't asked about the content.

BY MR. ROGERS:

Q Do you have it?

A Yes, sir, I do.

Q Okay. Does it show a date of August 21, 1996?

A Yes, sir, it does.

Q And that's Case Number 96 space 08 space 197?

A I don't have a case number listed on the interview.

Q Okay. Do you show a day, Wednesday; time, 3:30 p.m.?

A No, sir, I do not.

Q Do not?

[231] A No, sir.

Q Do you have the typed interview that you had with Daryl Atkins on that date?

A Yes, sir, I do.

Q Okay. How many pages is it, sir?

A Thirty-one.

Q Thirty-one pages?

A Yes, sir.

Q And what time did that interview end?

A This interview with Mr. Atkins, if I recall, we started – it started approximately ten o'clock in the morning and I believe we were finished by noon.

Q Okay. Do you have – yeah, 12:21 p.m. would be 12 – twenty-one minutes after noon?

A Okay.

Q Okay. Daryl Atkins, in fact, Investigator Lyons, denied shooting –

MS. ADDISON: Objection, your Honor.

BY MR. ROGERS:

Q – Eric Nesbitt, did he not?

THE COURT: There is an objection to the question.

Do you need to have this matter taken up outside the presence of the jury?

MS. ADDISON: Yes, sir.

* * *

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[Argument To Judge]

[239] made completely against Mr. Atkins' penal interests.

MS. ADDISON: Your Honor, even Mr. – anyone would understand at the time that they are less culpable and less responsible if they are not the one that pulled the trigger. He knew it then and he knows it now, and his story hasn't changed.

MR. HAHN: It's important not to blend the two rules, one a declaration against interests, which has somewhat slightly different rules because it's not a party. What we've got here is a party admission.

THE COURT: Party admissions, generally speaking, are civil in nature.

MR. HAHN: Well, Friend says that when there is a party to the action, whether it be criminal defendant or plaintiff or civil defendant, it's properly more precise to call it a party admission. When it's a stranger to the action it's a declaration against interests.

THE COURT: Right. And the Court considers the totality of the evidence before it, okay, and the development of that evidence by the direct and cross-examination of this witness. And under the circumstances prevailing at the time the statement was made, the Court finds that the statement is admissible.

Note the exception of the

* * *

[244] with William Jones in the commission of these things." And he's got all kinds of statements concerning

what he and William Jones did that whole day through the events of the robbery, the abduction, the shooting, him being shot, going to Riverside Hospital, and all the way through that point.

MS. ADDISON: Your Honor, he also said that he hasn't touched a gun in two-and-a-half years, that he was abducted himself by William Jones and forced to get in the truck with Eric Nesbitt. He denies ever having the gun in his hand. He later admits that he did have the gun only because he was told to hold it.

THE COURT: So what? I mean, what about – the concern of the Court is opening the door further to other crimes which may –

MR. ROGERS: Speaking for the Defense your Honor, we're not concerned about that.

THE COURT: Well, the Commonwealth – the Court hasn't read the statement.

MR. ROGERS: Oh, I understand that.

THE COURT: And what the Commonwealth indicates to the Court is that it opens up many other aspects of other crimes that are not necessarily covered in this statement, the investigation of other crimes. And are you waiving that insofar as putting all that evidence

* * *

[246] admitted his role in the crime.

MS. ADDISON: No, sir, he denied that he pulled the trigger, and that is the issue before this Court and before this jury. That is the issue. And certainly Daryl Atkins knows now and he knew the day he made that



statement that that made him less culpable if he was not the one who pulled the trigger. And that was the purpose for making the statement then, and that's the purpose for wanting it in before this jury now without subjecting himself to cross-examination, without us being allowed to say he has been convicted of 22 felonies and you can consider that in considering whether or not he's telling you the truth.

MR. ROGERS: The only brief response on that, if the Court please, first there is no indication – in fact, I would make a proffer that based consistently with what Investigator Lyons said about arresting him and questioning him the same day, he had no attorney at that time. He didn't have legal advice on what was going on.

MS. ADDISON: He moved to suppress.

MR. ROGERS: And that's not the problem. The Commonwealth can't have it both ways. The Court has made a ruling. Now, first the Commonwealth wants to protect him from other crimes, then says, no, we

* * *

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[Court Ruling]
[February 11, 1998]

[10] prejudice which may be involved.

So again we have general principles, if the Court please, that the Defense does not feel has been specifically determined by a case on all fours in the Commonwealth of Virginia.

In the same section, we deal with self-serving declarations. I won't read that, if the Court please, but it shows some – on prior consistent statements, self-serving declarations in Section 18.4, just make reference of that for the record, if the Court please. And the cases cited there only – thereunder.

But that would be our only argument, if the Court please.

THE COURT: All right. Thank you, Mr. Rogers.

MR. ROGERS: Yes, sir.

THE COURT: The Court finds that the principle is so fundamentally sound in Virginia that there are very few cases that would be on point. The Court would find that your argument for exceptions is not founded, that no exception exists for this out-of-Court statement of the Defendant offered through another person, another witness.

I would, therefore, sustain the Commonwealth's objection to the question, and the answer

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[36] Officer Anthony T. Tutone

dark ski mask. The person asked him for some money. And he started running north, which would be north toward the Denbigh area of Newport News.

When he reached the entrance to the Deer Park his left foot started hurting him, and he looked down and he



realized that he had been shot. I asked him if he had heard any gunshots or anything like that. He said no.

Then I asked him how he got to Riverside. He told me that he had hopped all the way to Riverside Hospital.

Q How long a distance is that?

A It's approximately a mile and eight-tenths.

Q Okay.

A At that time I asked him again if he could supply me with any information as – for a description. He stated he couldn't, it was just a dark ski mask. And that was all the conversation I had with him.

Q Were you able to make any observations concerning his state, or lack thereof, of intoxication?

A I didn't observe any odor of alcohol coming from him. He was laying on the stretcher, appeared to me to be calm. He was in pain. He kept complaining

* * *

---

[43] Doctor Ozita D. Cooper

to the Commonwealth Attorney and presented to the witness.)

BY MR. HAHN:

Q Doctor Cooper, would you look at those Exhibits 39 and 40, please, and tell us if you recognize them?

A These were the x-rays taken of Daryl Atkins.

Q Now, did you yourself render any medical treatment to Mr. Atkins, other than the emergency room, or was he referred to someone else?

A He had emergency room treatment, which consisted of x-rays, initial evaluation, vital signs, antibiotics, ice to the injured area, pain medication, splinting of the extremity.

Q And do you recollect or do your records indicate what Mr. Atkins' demeanor was during this treatment at the emergency room?

A He was pleasant and appropriate.

MR. HAHN: May I consult with counsel, your Honor?

THE COURT: You may.

(The Commonwealth Attorneys conferred.)

MR. HAHN: The Commonwealth has no

* * *

[48] Q Okay. Could you – and how many is that?

A We only saw two wounds in his left lower extremity.

Q Okay. Did – did either one of those show what would be described as a through-and-through wound, thus having an entry and an exit?

A On initial examination, we felt that he had those two wounds, one was an entry and the other was an exit.

Q Okay. And how about the – how about the second wound?



A We only identified two wounds in his extremity, one was the entrance and the other one was the exit that we decided.

Q Okay. Did you – you saw from the x-rays that there was a bullet lodged next to one of the bones as shown in the x-rays, is that right?

A That's correct.

Q So that was a bullet still inside?

A That's correct.

Q And you saw an entry wound that led to where that bullet was, is that right?

A In a close approximation, yes.

Q Okay. Now, did you see another wound?

* * *

[51] punctures in the skin that we initially identified.

Q Okay. What, if anything, did you identify later through that ER chart and your examination of Mr. Atkins that night?

A After reviewing the x-rays, we saw a bullet.

Q Okay.

A That led us to a question whether there was another wound.

Q Okay.

A Or did he have a previous injury.

Q Okay. Now, from the diagram, the wounds that you saw, on what leg, you said the lower extremity, for us laymen that means a leg, is that right?

A Yes.

Q On what side – which leg were the wounds?

A They were on the left lower leg.

Q On the left leg. And on the left leg, were they on the inside portion of the leg, the left leg, or the outside portion of the left leg of Daryl Atkins?

A One was on the inside portion, the other was on the outside portion.

Q Okay. The part that was on the inside portion, would you describe that as an entrance wound or [52] as an exit wound?

MS. ADDISON: Your Honor, again, I don't believe there is foundation for this witness' expertise to determine that.

THE COURT: Testifying from the chart that you provided her, I'm going to overrule the Commonwealth's objection.

BY MR. ROGERS:

Q Okay. Which side was the entry wound, Doctor Cooper, if you can determine that?

A As noted on the chart, the smaller, inside wound was the entrance wound.

Q Okay. So the entrance wound was on the inside of the lower left leg?



A That's correct.

Q Okay. And the exit wound would be where?

A On the outside leg.

MR. ROGERS: On the outside of the lower left leg. Okay.

Thank you, very much, Doctor. I appreciate your assistance.

THE COURT: Any redirect of Doctor Cooper?

MS. ADDISON: Just briefly.

* * *

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[68] Jacquelyn McIntyre

A That morning the client presented in the emergency department hopping on one foot. He came in, and at the time I had been back in the treatment area taking another patient back, and I had just come out into the triage area. We were meeting each other face-to-face.

Q Yes, ma'am.

A And he hopped up to me, and I said, "Did you hurt your ankle?" And he said, "I've been shot." And I said, "Come on, let's sit down." And he put his arm around my shoulder and I helped him to the seat. And I summoned for a wheel chair.

And at the time I was getting, you know, assessing the mechanism of injury or, you know, how the injury

was precipitated. And I, you know, I asked him, "You say you were shot," you know, "where and what happened?" And he said, "I was shot right outside the hospital." And I said, "In front of the hospital?" And he said, "Yes."

Q Okay. Did he give you any explanation other than that?

A When I asked him, I said, "Were you robbed?" And he said, "No, I got away." And I said, "You say you were right in front of the hospital when this happened and you hopped all the way here to the emergency department?" And he said, "Yes."

[69] Q Okay. Did he have anything around the wound or anything?

A He had the wound, as I recall, wrapped with a towel around his ankle. And I unwrapped the towel just briefly enough to assess that there was the presence of a bloody ankle, and I could not determine the amount of wounds that were present, but there was some blood in the area. And I was looking for a deformity in the presence of a pulse in the foot.

Q Did Mr. Atkins give you any explanation how he managed to come across a towel between the front of the hospital and the ER entrance?

A No, he didn't.

Q How would you assess his demeanor?

A On his presentation to the emergency department, he was calm, very cooperative. He – he was a person that was appearing to want my help for something. He was coming to me for help. He was not



demanding, I guess I'm trying to say, as, you know, most people would be. He was not demanding. He was reaching out to me. You know, like he was in a form of help me.

Q Okay. Did he show any fear?

A No.

Q No excitement or anything of that nature?

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[107] Doctor Leah Bush – Cross

Q Doctor Bush, on the – while you have the x-rays there, Commonwealth Exhibits 39 and 40, can you tell from those x-rays the direction, whether the direction of entry of the two wounds are the same or if they are from opposite directions on that leg?

A It would appear that they both may be coming this way (indicating). I can't say for sure, but that's the appearance, my impression.

Q Okay.

THE COURT: Excuse me, counselor, the record is absent any direction when she's pointing.

MR. ROGERS: I'm sorry.

THE WITNESS: Excuse me, sir.

MR. ROGERS: If you can identify – excuse me, your Honor.

BY MR. ROGERS:

Q If you could identify the Exhibit Number and then point to it, whether it's entering from the left or right side.

A This is Exhibit Number 39. It would appear that the bullets are coming from this side (indicating), the large bone or tibia.

Q Which one is this, the left or right?

A Oh, I'm sorry, it's the left.

Q Okay.

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this case I turned everything in to Property and Evidence and Investigator Lyons checked them out and took custody of them his self.

Q And when you took the samples of the seat covers, cut those out, did you air-dry those at the office also? Did you air-dry those at the office?

A Yes, sir.

MR. SAUNDERS: All right. May I see Commonwealth's Exhibit Number – Numbers 52 and 53, your Honor.

THE COURT: They are being published.

MR. SAUNDERS: Oh, I'm sorry.



BY MR. SAUNDERS:

Q Okay. When you – you collected swab number 24, your Item 24 –

A Taken from the driver's door, the lower half section, is that the –

Q That's correct. At that particular point in time on August the 21st, did you have any difficulty in opening the driver's door?

A I could not from the outside. I had to from the inside.

Q From the inside you could open the door?

A Yes, sir.

[198] Q Now, you examined the interior of the vehicle thoroughly, did you not, Mr. Martin?

A As thoroughly as I could, yes, sir.

Q And you've told us about the items that you recovered, is that correct?

A Yes, sir.

Q So you did not recover any weapon of any nature in the vehicle?

A No, sir.

Q All right. Now, of course, the only thing you can actually tell us is that you went and looked at this vehicle on August the 21st, 1996 and what you found. You don't know what happened to the vehicle between the 17th and the 21st, is that correct?

A No, sir.

MR. SAUNDERS: Excuse me. May I consult for a moment?

THE COURT: That's a typical question, is that correct. No, sir.

MR. ROGERS: Rephrase it.

THE COURT: It's not correct, he says. The primary question was correct. He answered that correctly. When you added that other one, it's going to confuse the record.

MR. SAUNDERS: I'm not trying to

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[215] John G. Ward

turned either to the right or to the left. We refer to the grooves as grooves and the original surface of the land – of the barrel as land impressions.

In this case here we had six lands and grooves to the right-hand direction of twist. I examined all six barrels in conjunction with each other – excuse me, all six bullets in conjunction with each other and determined there was sufficient, unique individual characteristics to conclude that they had been fired from the same barrel.

Q Was your examination able to tell you what specific make of firearm it would have been that fired these bullets?



A I can't tell you a specific make. We do know from years of research and tabulating the rifling characteristics measurement, the widths of these lands and grooves and the direction of twists and the occurring number of lands and grooves, there has been compiled by the Federal Bureau of Investigation a computer program to which we refer to, and it will tell us and give us a list of firearms that we can use as an investigative aid for the department of the type of firearm it may be used from. It's not all inclusive but it does tell us some of the firearms that have barrels that are consistent with those that we're looking for.

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[77] Richard Martin

[February 12, 1998]

of Eric Nesbitt's truck when it was discovered, is that correct?

A Yes, I did.

Q During your search of that vehicle, were you able to find any type of firearm?

A No, sir.

Q Okay. Now, also, when you were able – when you were processing the truck, were you able to open the driver's side door at that time to assist you?

A Not from the outside, just from the inside.

MR. HAHN: Okay. I'd ask the Bailiff to show the witness this exhibit – or it needs to be marked, first.

THE COURT: Mark it, please, Commonwealth Exhibit 68.

(Commonwealth's Exhibit Number 68 was marked for identification.)

BY MR. HAHN:

Q You recognize that photograph, Mr. Martin?

A Yes, I do.

Q Is that one that you took during the processing of the vehicle?

A Yes, sir.

* * *

CROSS-EXAMINATION

BY MR. ROGERS:

Q You didn't have any difficulty opening the driver's door from the inside, did you?

A No, sir.

Q Okay. Do you know where the truck has been? You saw this back, where, August the 21st, as I recall, in 1996?

A Yes, sir.

Q Okay. Do you know where it's been since then?

A Well, for a while it was kept in the City Farm impound lot located in the City of Newport News. And



when it was removed, I don't know the exact time or date, and then the last time I saw it it was here in York County.

Q Okay. And when it was kept at the impound lot at the City Farm in Newport News, this is not in a covered garage area, this is out in the open?

A Yes, sir.

Q And likewise the – where you saw it in York County, that likewise was not in a covered garage, it was out in the open, is that right?

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[97] William A. Jones

We'll continue.

Call your next witness.

MS. ADDISON: Commonwealth would call William Jones.

THE COURT: William Jones.

(The witness was duly sworn.)

WILLIAM A. JONES,

called as a witness by the Commonwealth, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. ADDISON:

Q Would you state your name for the record, please.

A William A. Jones.

Q Mr. Jones, if you can speak up a ittle bit into the microphone, make sure everyone can hear you.

How old are you, Mr. Jones?

A Twenty-eight.

Q And where do you currently live?

[98] A In jail, Virginia Peninsula Regional Jail.

Q And how long have you been in jail?

A About seventeen months.

Q Where did you reside before going to jail?

A In Hampton.

Q Directing your attention, Mr. Jones, behind you to your right is what has previously been marked as Commonwealth's Exhibit 4, the large photograph with the two smaller photographs on top. Have you seen that before?

A Yes, I have.

Q Do you recognize that area?

A Yes, it's Hampton.

Q Can you indicate on there where in Hampton you were living prior to going to jail?



There is a pointer right in front of you there, if you need to use that?

A Sacramento Apartments.

Q Is that shown on that Exhibit Number 4?

A It's in red (indicating).

THE COURT: The witness is pointing to the top part of the exhibit, which is outlined in red.

[99] BY MS. ADDISON:

Q And how long did you live in Sacramento Apartments?

A About four months.

Q Do you remember when that was?

A In '96, about May – March, February, somewhere in there.

Q Who did you live there with?

A My father.

Q Were you employed when you lived there with your father before going to jail?

A Yes, I was.

Q Where were you employed?

A Golden Corral.

Q What did you do there?

A Washed dishes.

Q How long were you employed by Golden Corral?

A About two months.

Q Up until you went to jail?

A Yes.

Q Mr. Jones, why is it that you went to jail in August of 1996?

A I was involved in a murder, robbery, abduction.

[100] Q Do you know the name of the victim in that case?

A Mr. Nesbitt.

Q What is the status of those charges today?

A I pleaded guilty.

Q What did you plead guilty to?

A Abduction, robbery, murder, three firearm charges.

Q Why did you do that?

A Because I was guilty.

MS. ADDISON: If I might have the next numbered exhibit, I believe it's 68, the document.

THE CLERK: It's 69.

MS. ADDISON: 69. If you could hand that to Mr. Jones.

BY MS. ADDISON:

Q Mr. Jones, the Bailiff is going to hand you a document that's been marked as Commonwealth's Exhibit Number 69. Do you recognize that document?



A Yes, I do.

Q Directing your attention to the last page of that document, there are some signatures that appear there?

A Yes, it is.

[101] Q Do you recognize any of those signatures?

A Yes, I do.

Q Whose?

A My signature, my lawyer's signature, and the Commonwealth's signature.

Q What is that document?

A Supposed to be my plea agreement.

Q It's supposed to be? Have you seen it before?

A Yes, I have.

Q Do you understand what it says?

A Yes, I do.

Q What is that? I'm not asking you to read the entire document, but what's your understanding of that agreement?

A If I tell the truth, the Commonwealth would take the robbery, abduction and two firearm charges, which would leave me with murder and one firearm charge.

Q What is your understanding of what's expected of you here today?

A To tell the truth.

Q What do you expect to happen as far as sentencing on those charges?

A Excuse me? I don't understand.

[102] Q Do you have an agreement as to what you will be sentenced to on those charges?

A Yes.

Q What is that agreement?

A Just that I will be charged with – you will drop the following charge I just stated.

Q Have you been sentenced on any of those charges yet?

A No, I haven't.

Q Do you know what your sentence will be?

A No, I do not.

Q Other than those charges that you have pled guilty to, have you ever been convicted of a felony before?

A No, I have not.

Q Have you ever been convicted of a misdemeanor involving stealing or lying?

A No, I haven't.

MS. ADDISON: Your Honor, if I might –

BY MS. ADDISON:

Q Behind you, directly behind you, Mr. Jones, it's the smallest of those three items, there is one marked



Commonwealth's Exhibit Number 3 – that's [103] it. Do you recognize that photograph?

A Yes, I do.

Q And what is that a photograph of?

A Me, Mr. Nesbitt and Mr. Atkins.

Q Mr. Atkins? Where are each of those people in that photograph?

A I'm driving. Mr. Nesbitt in the middle, and Mr. Atkins in the passenger side.

Q How is it that you know Mr. Atkins?

A I used to live by him in Sacramento.

Q Do you see him in the Courtroom here today?

A Yes, I do.

Q Point him out, please.

(The witness indicated the Defendant.)

THE COURT: The witness is pointing to the Defendant.

BY MS. ADDISON:

Q Do you recall when that photograph was taken?

A Yes, I do.

Q And when was that?

A August 16th or the 17th.

Q Do you recall approximately what time [104] it was?

A Well, it's got it stated up there, 12:32.

Q And where was that photograph taken?

A In Hampton at a bank, Crestar.

Q Whereabouts, near the bank or in the bank or outside the bank?

A Outside the bank, in the driver's window.

Q In the drive-through window?

A Yes.

Q Directing your attention again to that big aerial map, which is Commonwealth's Exhibit 4, and the two photographs, two enlarged photographs that are over the top of that, that have been previously marked as Commonwealth's Exhibit Number 38 and 37, can you indicate on there where, if you know, Mr. Atkins lived in August of 1996?

A Yes, I can (indicating on map).

Q Is that the Sacramento Apartments, as well?

A Yes, it is.

THE COURT: The witness pointed to the same basic area that he pointed to earlier, the top side of the exhibit, which is also marked in red.

[105] BY MS. ADDISON:

Q Did he live in the same or a different building than you lived in?

A A different building.



Q How is it that you came to know Daryl Atkins?

A I met him at the bus stop.

Q Do you recall when that was?

A I don't – maybe two months before this happened.

Q You never worked with him?

A No, I haven't.

Q Well, how would you describe your relationship with him?

A I guess a drinking buddy type of thing.

Q In the summer of 1996, approximately how often did you see him, Mr. Atkins?

A Basically, it was on the weekends when I wasn't visiting my kids and wife.

Q Did you see Daryl Atkins on Friday, August 16th of 1996?

A Yes, I did.

Q When did you first see him?

A About 11:30, twelve o'clock.

[106] Q In the evening or the daytime?

A Daytime.

Q And where was that?

A At his house, his father's house.

Q How long on that day were you together with Mr. Atkins?

A All day.

Q From eleven or twelve until when?

A Until about one at night.

Q One the following morning?

A Yes.

Q And what is it that you and Mr. Atkins did throughout that day and evening?

A We was drinking and smoking weed.

Q What were you drinking?

A Beer and some gin and juice premixed.

Q Did you do anything else while you were at his apartment?

A Just smoked weed and just watched TV.

Q Did you have anything to eat?

A Not that I can recall.

Q Do you recall approximately how much it is you had to drink?

A I had approximately – probably about six or seven 40-ounces, 32-ounces.

[107] Q Of beer?

A Yes, it was.

Q Anything else that you had to drink?

A Two bottles of premixed gin and juice.



Q Was there anyone else there other than you and Mr. Atkins?

A A couple of his friends came by, in and out.

Q Did you know who those people were?

A By face, but I didn't know their names.

Q Do you now know any of their names?

A One, just Mark.

Q Do you recall approximately how long Mark was there?

A Not approximately. But he was there around, I don't know, 10:30, eleven o'clock.

Q Is that in the morning or the evening?

A That was at night.

Q During that entire day and evening, did you ever leave the apartment?

A Yes, we did.

Q When did you first leave the apartment?

A About 12:30.

[108] Q Around noon?

A Yes, it was.

Q And where did you go then?

A Went to 7-Eleven.

Q Is that 7-Eleven indicated on that aerial map marked as Commonwealth's Exhibit Number 4?

A Yes, it is.

Q Can you indicate where that is? (The witness pointed on the map.)

THE COURT: The witness is indicating to a point approximately eight inches below the red outlined area on the top part of Exhibit 4.

BY MS. ADDISON:

Q I'm sorry, Mr. Jones, if you could, the enlarged photograph that is next to where you just indicated, that's been marked Commonwealth's Exhibit 38, do you recognize that photograph?

A Yes, I do.

Q And what is that a photograph of?

A 7-Eleven, video store and Soaps-N-Suds.

Q Does that accurately depict the appearance of that 7-Eleven and shopping center it's in?

A Yes, it did.

[109] Q You said you first went there at noon or 12:30 on August 16th?

A Yes.

Q Why did you go there the first time?

A Me and Mr. Atkins went to get some beer.

Q How did you get from his apartment to that 7-Eleven?

A We walked.



Q Did you go anywhere else anytime that day?

A Went to the ABC Store.

Q How did you get to the ABC Store?

A One of Mr. Atkins' friends drove us.

Q What was the purpose of that trip?

A To go get some liquor.

Q Did you, in fact, buy liquor at the ABC Store?

A I did.

Q Do you recall what it was that you bought?

A Some gin and juice premixed.

Q Premixed?

A Premixed.

Q Do you recall where the money came [110] from that you used to buy the beer at the 7-Eleven and the gin and juice at the ABC Store?

A Most time we all pitched in.

Q You all buy – who do you mean?

A Well, whoever was at the house at the time.

Q Did that include Daryl Atkins?

A Yes, it did.

Q On every occasion?

A Just about.

Q How many times did you go to the 7-Eleven during that day and evening?

A Probably was about four or five.

Q Each time did you make a purchase?

A Yes, I did.

Q What did you buy there?

A The beer and some blunts and some cigar paper.

Q Throughout that day and evening, Mr. Jones, did you ever see anyone with a gun?

A Mark brought a gun about 11:30 at night.

Q Where were you when that happened?

A At Mr. Atkins' house.

Q Did you actually see him with a gun?

[111] A Yes, I did.

Q And did you see what, if anything, he did with that gun?

A He gave it to Mr. Atkins.

Q Was there any conversation about the gun?

A Just that he wanted to use it, he would bring it back in the morning.

Q Who wanted to use it?

A Mr. Atkins wanted to use it.

Q The last time you went to the 7-Eleven Store, do you know about what time that was?

A About 11:30.



Q Eleven-thirty at night?

A Yes, it was.

Q Was that before or after Mark gave Daryl Atkins the gun?

A That was after.

Q And how did you get to the 7-Eleven?

A We walked.

Q Who is we?

A Me and Mr. Atkins.

Q Did anyone else go with you?

A No, they did not.

Q Do you know where the gun was on that [112] trip to the 7-Eleven?

A Mr. Atkins had it in his – in his pants in a belt buckle.

Q Do you recall what the gun looked like?

A Just a brown-handled black gun.

Q Did you ever have that gun in your possession on that trip to 7-Eleven?

A No, I did not.

Q But you saw it?

A I saw it.

Q Did you and Daryl Atkins have any conversation about the gun?

A No, we did not.

Q This Mark that originally brought the gun there, do you know his last name?

A Now I do.

Q Did you at the time?

A No, I did not.

Q Was he a friend of yours or a friend of Mr. Atkins?

A He was a friend of Mr. Atkins.

Q Had you met him before that day?

A Yes, I have.

Q Where?

[113] A At Mr. Atkins' house.

Q When you got to the 7-Eleven that last time, what did you do?

A Well, time we got there, Mr. Atkins told me that he didn't have enough money to get beer, and I had brought my dollar and fifty. I was going to get me one, and he said wait, he was going to panhandle and get some change up.

Q He was going to do what to get change up?

A Panhandle, ask people for money.

Q And so if you could indicate again on that photograph on the front there that shows the 7-Eleven and the shopping center, Commonwealth Exhibit Number 38, where you both were when you got to the 7-Eleven?



A I was right about here at the corner of Soaps-N-Suds (indicating on map). He was right in here toward the 7-Eleven.

Q Right in front of the 7-Eleven?

A Sometimes.

THE COURT: The Court is unable to make a determination of where he was pointing.

MS. ADDISON: Unable to –

THE COURT: Unable to make a determination to recite it to the record.

[114] MS. ADDISON: Your Honor, I can, if the Court would prefer, on Commonwealth Exhibit Number 38, Mr. Jones indicated that he was standing in front of the Soaps-N-Suds, which is on the far left-hand corner of that photograph, that Mr. Atkins was standing near the front entrance of the 7-Eleven, which is approximately in the middle of that photograph.

THE COURT: Is that a fair statement, Counselor?

MR. ROGERS: Yes, sir.

THE COURT: All right. Thank you.

BY MS. ADDISON:

Q What happened when you got to the 7-Eleven, Mr. Jones?

A He started asking people for money. Mr. Atkins started asking people for money. And I waited at the corner of Soaps-N-Suds until he got it up, and I was going to go in the 7-Eleven and buy the beer.

Q Did you see him actually get any money from anyone?

A Yes, I did.

Q Do you recall how many people gave him money or how much he got, if you know?

A I don't know how much he got. But probably one or two people give him some change.

[115] Q Did you ever see him take the gun out while he was getting money from those people?

A No, I did not.

Q And what happened next?

A Then Eric Nesbitt came up in the truck. He parked his truck. Him and Mr. Atkins had a conversation. Mr. Nesbitt went on into the 7-Eleven. I don't know how long. Then he came out.

Q You say Mr. Nesbitt. Now, did you know him at that time?

A No, I did not.

Q Had you ever seen him before?

A No, I hadn't.

Q I'm going to ask that the Bailiff hand you what has been previously marked as Commonwealth's Exhibit Number 2 and ask if you recognize what that is a photograph of.

A It's Mr. Nesbitt's truck.

Q The same truck that you saw pull into the 7-Eleven?



A Yes, it is.

Q Does it in that photograph appear to be differently than it did when you saw it pull into the 7-Eleven?

A Well, the driver's side wasn't [116] wrecked.

Q The driver's side wasn't wrecked?

A No.

Q I'm sorry, I didn't hear you. I'm sorry. I'm just repeating what I thought you said. All right. There is damage shown in that photograph?

A Yes, it is.

Q And where does that photograph show damage?

A On the driver's side.

Q You said that Daryl Atkins spoke with Mr. Nesbitt before he went into the store?

A Yes, he did.

Q Could you hear what he was saying?

A No, I couldn't.

Q Could you hear if Mr. Nesbitt said anything back to him?

A No, I could not.

Q Were you still there to see whether or not Eric Nesbitt came out of the 7-Eleven?

A Yes, I was.

Q Did you, in fact, see him come out?

A Yes, I did.

Q Did you move at any time from in front of the Soaps-N-Suds, that you indicated, while Mr. Nesbitt [117] was in the store?

A No, I did not.

Q Did you have any conversation with Mr. Atkins while Mr. Nesbitt was inside the store?

A No, I did not.

Q So when he came out of the store you were still as you indicated before?

A Yes, I was.

Q And where was Daryl Atkins?

A He was still by 7-Eleven.

Q What happened then?

A Then Mr. Nesbitt backed out and was getting ready to get on Armistead. But Mr. Atkins whistled at him, so Mr. Nesbitt stopped the truck. Mr. Atkins went to the passenger side and I guess Mr. Nesbitt rolled down the window and they started talking. And then I went around to the driver's side.

Q Do you know about how long that was that they were talking before you went to the driver's side?

A At least two or three minutes.

Q Why did you go to the driver's side when you did?

A I just wanted to hear what he was talking about.



[118] Q What did you see when you walked up to the driver's side?

A Mr. Atkins had the gun on Mr. Nesbitt.

Q Had the gun on him how?

A Pointing at him.

Q Were they both inside or outside the truck?

A Excuse me?

Q Where were they? Were they both inside the truck or one out, one in?

A Mr. Nesbitt was in the truck on the driver's side. Mr. Atkins was on the passenger side outside the door.

Q And what happened next?

A Then when I was there, he said, "Move over, let my friend drive." So –

Q Who said that?

A Mr. Atkins. Excuse me.

Q He said what?

A "Let my friend drive." So I got in and Mr. Nesbitt scooted over to the middle and Mr. Atkins got into the passenger side.

Q Did you have any difficulty opening the driver's side door?

A No, I did not.

[119] Q Did you realize at that point that you were involved in a robbery?

A At that point, yes.

Q What happened next?

A Then we drove off, went to the back of 7-Eleven, where some houses were.

Q Ask if you could, Mr. Jones, maybe at this point it would be easier to remain standing next to that aerial photograph, if you can indicate for the jury where you went from there.

A Yes, I can.

(The witness stepped down from the witness stand.)

BY MS. ADDISON:

Q Speak up, please. And when you pulled out of the 7-Eleven, which direction did you go?

A Went left, we turned at Deerfield Road, went down to the apartments behind the 7-Eleven.

MR. ROGERS: Speak up a little bit, Mr. Jones.

MS. ADDISON: Yeah, there you go. Turn this way.

THE WITNESS: We left 7-Eleven and went down to the light, turned left to Deer Run Road, went into the housing area back here, where I hit a car.

[120] BY MS. ADDISON:

Q Where you hit a car?

A A parked vehicle.

Q How did that happen that you hit that parked vehicle?



A The truck slid. It was wet outside.

Q Did anyone grab the steering wheel and cause that to happen?

A No, they did not.

Q What was Mr. Atkins doing and Mr. Nesbitt doing when you drove back into the residential area?

A Mr. Atkins was talking about the radio, CD player that Mr. Nesbitt had. Mr. Nesbitt wasn't saying nothing at that point.

Q What happened while you were back in the residential area, after you hit the parked car?

A After I hit it, we just came back out, came back to Deer Run at the light.

Q At any point from the time you left the 7-Eleven until when you came out of that residential area, did anyone take any of Mr. Nesbitt's money?

A Yes.

Q Who was that?

A Mr. Atkins asked Mr. Nesbitt, asked [121] him did he have any money. He pulled out some money from his pocket, I believe, and gave it to Mr. Atkins.

Q Did you get any of that money right then?

A No, I did not.

Q And what happened next?

A After that, it must not have been enough money or something, because the subject came up that Mr. Nesbitt had a bank card. And we went to Crestar Bank.

Q From the time you got into the truck at 7-Eleven until when you headed to Crestar Bank, do you know where the gun was?

A Yes, I do.

Q Where was that?

A Mr. Atkins had it pointed at Mr. Nesbitt.

Q During that time, did he at any time put it back in his pocket?

A No, he did not.

Q During that time, at any point, did you have the gun?

A No, I did not.

Q And what happened – indicate on there, please, Mr. Jones, the Crestar Bank, if you know [122] where it is.

A It's right here (indicating on map).

THE COURT: Now, the witness is pointing to the bottom left-hand portion of Exhibit 4.

MS. ADDISON: Thank you, your Honor.

BY MS. ADDISON:

Q On the way to the bank, was there any conversation among anyone inside the truck?

A We was just talking about, like I said, the radio, and that was basically it.

Q Do you recall what the conversation about the radio was?



A That we just wanted it. We was just going to take it.

Q Who wanted it?

A Excuse me?

Q Who wanted it?

A Me and Mr. Atkins.

Q And that's who was going to take it?

A Yes, it was.

Q Did Mr. Nesbitt say anything about it?

A He said, take it, that he didn't care just as long as we didn't hurt him.

MS. ADDISON: As long as you didn't hurt him.

[123] Your Honor, at this time I'd ask that we can begin to show the previous ATM video tape.

(The witness returned to the witness stand.)

MR. ROGERS: Okay, sir.

THE COURT: All right. Turn it on.

MS. ADDISON: Your Honor, with the Court's permission, if I could stand next to the monitor Mr. Jones is seeing. They all should have the same image

THE COURT: Is the monitor on in front of the jury?

THE JURY: Yes, it is.

THE COURT: Okay. Yes, ma'am, you may.

BY MS. ADDISON:

Q That's the – just the very front end of the truck and the column, is that correct?

A Yes, it is.

MS. ADDISON: Mr. Hahn can advance that.

BY MS. ADDISON:

Q In this photograph, Mr. Jones, do you recognize this?

A Yes, I do.

Q And what does that show?

[124] A Me, Mr. Nesbitt and Mr. Atkins.

Q And is that you behind the driver's wheel?

A Yes, it is.

Q And Mr. Nesbitt?

A In the middle. Mr. Atkins on the passenger side.

Q Do you recall when this photograph was taken?

A On the 17th of August.

Q And do you know where the gun was at this time?

A Mr. Atkins had it pointing at Mr. Nesbitt.

Q Can you describe for the jury what is going on during these frames?

A I think we was just talking about his bank card or whatever he had in his wallet.



Q What, if you recall, was Mr. Nesbitt doing?

A He was taking out his bank card out of his wallet.

Q Do you recall what, if anything, Mr. Atkins was doing?

A He wasn't doing too much.

[125] Q do you recall where the gun was during the rest of this?

A Still pointed at Mr. Nesbitt.

Q At any point during this ATM withdrawal, did Mr. Atkins give you the gun?

A No, he did not.

Q At any point during this ATM withdrawal, did he put the gun away or in his pocket?

A No, he did not.

Q Was there any conversation while this withdrawal was going on?

A I think I might have said it was taking a long time or something.

Q Did Mr. Nesbitt say anything to you or to Mr. Atkins?

A No, he did not.

Q To the best of your recollection, did Mr. Atkins say anything to – either to you or to Mr. Nesbitt?

A Not that I can recall.

Q In this frame, Mr. Jones, there appears to be a hand behind Mr. Nesbitt's back. Do you know whose hand that is?

A That's mines.

Q And do you know during this time where [126] the gun was?

A Mr. Atkins still had it.

Q In this frame, there appears to be something in Mr. Nesbitt's hand. Do you recall what that is?

A Money.

Q The money he got from the ATM machine?

A Yes, it is.

Q How much was that, if you recall?

A Two hundred dollars.

Q And what, if you know, happened with that money?

A Mr. Atkins put it in his pocket.

Q Here again behind Mr. Nesbitt's back there appears to be a hand. Do you know whose hand that is?

A That's mines.

Q Where, at that time, was the gun, if you recall?

A Mr. Atkins still had it.

Q Where did he have it?

A Pointed at Mr. Nesbitt.



Q Appears to be a line or something on Mr. Atkins' head, did he have something –

A A hat.

[127] Q A hat. In this frame, there appeared to be a hand – two hands on the steering wheel. Do you know whose those are?

A They are mines.

Q Anything other than the steering wheel in them at that time?

A No, it's not.

Q And where, if you recall, was the gun at this point?

A Mr. Atkins still had it on Mr. Nesbitt.

MS. ADDISON: Your Honor, I don't know if this is in Counsel's way. If it is, we can take it away.

MR. ROGERS: I can move around, with the Court's permission. It's not necessary, your Honor.

THE COURT: That's fine.

BY MS. ADDISON:

Q When you left the bank, Mr. Jones, where did you go next?

A We went back to Sacramento.

Q Sacramento Apartments?

A Yes, ma'am.

Q Did you go into any of the apartments?

A No, we didn't. We went to the school.

[128] Q The school?

A Yes.

Q Is the school shown on that aerial map, Commonwealth's Exhibit Number 4?

A Yes, it is.

Q Would you point it out, please.

(The witness indicated on the map.)

THE COURT: The witness is pointing to a fairly large area immediately below the red outlined area, which is formally designated as Sacramento Apartments area on Exhibit 4.

BY MS. ADDISON:

Q Where did you go when you got to the school?

A We parked right in front of it.

Q In front of the school?

A Yes.

Q Did you get out of the truck?

A No, we did not.

Q Did Mr. Atkins get out of the truck?

A No, he did not.

Q Did Mr. Nesbitt get out of the truck?

A No, he did not.



Q Where, if you recall, was the gun [129] while you were there at the school?

A Still pointing at Mr. Nesbitt.

Q Was there any conversation amongst any of the three of you at the school?

A We started – still talking about the radio. Then we was talking about Mr. Nesbitt saw us when we was at the bank and we had to do something with him. And we suggest – I suggested that we just tie him up so we can get away.

Q Was Mr. Nesbitt involved in that conversation at any time?

A He was like, "Yes, yes, just tie me up as long as you just don't hurt me."

Q Did he say anything about the radio at that point?

A No, he never said no more about the radio. He just said – once he said, "You can have it," he didn't say no more about it.

Q So you talked about tying Mr. Nesbitt up, is that correct?

A Yes, we did.

Q Was there any discussion about where you were going to leave him?

A Well, we thought about somewhere in Hampton. We couldn't think of nowhere in Hampton. [130] Mr. Atkins said he knew where a place was in Yorktown.

Q Did he say anything else about where in Yorktown?

A He said near his grandfather's house.

Q Did you know where that was?

A No, I did not.

Q What happened next?

A We left the school, got on 64.

Q Interstate 64?

A Yes.

Q Going in which direction?

A Towards Williamsburg.

Q And about how long were you on Interstate 64?

A About thirty-five minutes.

Q Did anyone change position in the truck? Were you still driving?

A Yes, I was.

Q Was Mr. Nesbitt still in the middle?

A Yes, he was.

Q Was Mr. Atkins still on the passenger side?

A Yes, he was.

Q And where, if you recall, was the gun during that trip?

[131] A Mr. Atkins had it in his hand.



Q In his hand?

A Yes.

Q Was there any conversation among the three of you during that half-hour trip?

A Me and Mr. Nesbitt was talking about where he worked, did he have a wife or girlfriend, just basic conversation.

Q What did he tell you about where he worked?

A He said he worked at – he was in the Air Force and he worked at an auto parts store.

Q What, if anything, did he tell you about having a girlfriend?

A He said he had one but he wasn't married.

Q Did you tell him anything about yourself?

A I just told him I was married, and I had a wife.

Q Was Daryl Atkins part of that conversation?

A No, he was not.

Q What was he doing during that trip?

A I think he was still messing with the [132] radio, trying to get it out.

Q Did either you or Mr. Nesbitt say anything to Daryl Atkins during that trip?

A No, we did not.

Q And during that 30-minute trip, did he ever put the gun – did Mr. Atkins ever put the gun away?

A No, he didn't.

Q Did you at some point get off of Interstate 64?

A Yes, we did.

Q Do you know where that was?

A It was the Lee Hall exit.

MR. ROGERS: If it please the Court – excuse me just a second, Madam Commonwealth – in an effort to have matters proceed on in a more rapid fashion, since it's not really an issue here, we're getting to the issue of this case, at this – I have not objected, if the Court please, to leading questions and that sort of – form of examination by the Commonwealth. Since we're getting up to the gravamen of this case, I would request and object to any leading questions, and I'll make appropriate objection. But I wanted to forewarn the Commonwealth.

THE COURT: Thank you, so much, Mr. Rogers.

[133] If you will carefully word your questions in a nonleading fashion, Mrs. Addison.

MS. ADDISON: Yes, sir.

THE COURT: So we can still move along promptly.

BY MS. ADDISON:

Q And why, Mr. Jones, did you get off of the interstate at the Lee Hall exit?

A Because we was going to Yorktown.

Q Is that a route that you were familiar with?



A Yes, it is.

Q Had you ever been down that road before?

A Yes, I have.

Q And what happened next, after you got off of the interstate?

A We got off of the interstate and went down past the 7-Eleven to this curvy road, stopped the truck.

MS. ADDISON: If I might ask, with the Bailiff's help, the exhibit directly behind Mr. Jones, I believe that's Commonwealth's Exhibit Number 5.

CAPTAIN MOORE: Is this the way you want it?

[134] MS. ADDISON: Upside down.

BY MS. ADDISON:

Q Directing your attention to that exhibit, Mr. Jones, have you seen that before?

A Yes, I have.

Q And describe, if you would, what you know of that map.

A Of the map?

Q Yes, sir.

A That's where the killing was involved, where the killing was at.

Q If you would indicate on that map, that exhibit, the area that you're talking about.

(The witness indicated on the map.)

THE COURT: The witness is indicating to an area that is rectangular – square in shape, block boxed in, and the center upper portion of that boxed-in area, in a general fashion.

BY MS. ADDISON:

Q While you're still standing, Mr. Jones, there is one more exhibit that was behind your chair. I believe that's previously been marked as Commonwealth's Exhibit Number 6. Do you recognize that area?

[135] A Yes, I do.

Q And what is that?

A Where the murder occurred.

Q You're going to need to speak up. Speak up a little bit.

A I said this is where the murder occurred (indicating).

THE COURT: Pointing to an area which is immediately left to a white square area that looks to be an intersection or a junction.

BY MS. ADDISON:

Q Okay, prior to August 16th, 1996, had you ever been to that area before?

A No, I haven't.

Q You said you stopped there. Why did you stop?

A That's where Mr. Atkins told me to.

Q If you would, Mr. Jones, slowly describe what happened after you stopped at that spot.



A I stopped. Mr. Atkins got out. He directed Mr. Nesbitt out.

MR. ROGERS: Excuse me, I couldn't hear that.

THE WITNESS: He asked Mr. Nesbitt to get out.

[136] BY MS. ADDISON:

Q Where was the gun at that time, if you know?

A It was in Mr. Atkins' hand. As soon as Mr. Nesbitt stepped out of the vehicle and probably took two steps, the shooting started.

Q Where were you when the shooting started?

A Still in the truck.

Q Where in the truck?

A In the driver's side.

Q Were there any lights on anywhere?

A Inside the vehicle.

Q Were there any lights outside?

A No, it wasn't.

Q Excuse me?

A No, it wasn't.

Q And what did you do?

A As soon as the shooting started, seemed like there was some coming in the truck. I had rolled down the window. I tried to get out, and rolled down the window and jumped out.

Q How did you jump out of the truck?

A On my hands and knees.

Q Where, when you jumped out of the [137] truck, was Mr. Nesbitt, before you jumped out?

A He was on the passenger side.

Q Was he inside or outside of the truck?

A He was outside the truck.

Q Do you know how far outside he was?

A Like I say, he took about two steps.

Q And Mr. Atkins, at that point, was he inside or outside of the truck?

A He was outside the truck.

Q You said you couldn't get the door open, is that correct?

A Yes.

MR. ROGERS: If the Court please, –

THE COURT: Sustained. Rephrase the question.

BY MS. ADDISON:

Q Restating what you had already said, you previously said you could not get the door open. How did you get out of the truck?

A I rolled down the window and jumped out of the truck.

Q Which side of the truck did you get out?



A The driver's side.

Q You said you landed on your hands and [138] knees, is that correct?

A Yes.

MR. ROGERS: Objection, if the Court please.

MS. ADDISON: Your Honor, I'm simply clarifying his previous testimony. It is difficult to hear him.

MR. ROGERS: He said he jumped out the window. And then the Commonwealth provided the answer by way of a leading question: And you landed on your hands and knees.

THE COURT: Ms. Addison, I'm going to sustain the objection. You may ask the question – if the jurors are having trouble hearing, just raise your hands and I'll ask him to repeat the answer to the question.

BY MS. ADDISON:

Q If you recall, Mr. Jones, how did you land outside the truck?

A I landed on my hands and knees.

Q And what did you do next?

A Came around the truck. Me and Mr. Atkins started fighting over the gun. He got shot in the leg, he started saying, "Ow, ow, ow, why you shoot me?" I picked up the gun, put it behind –

THE COURT: Hold on a minute. The [139] jury is having trouble understanding. Back up, please, to what happened when you started struggling with the gun and

you shot him in the leg. From there, or he was shot in the leg. What was said?

THE WITNESS: I said I picked up me, and I came around the truck from the driver's side, came around from behind the truck. Me and Mr. Atkins started tussling with the gun. He got shot in the leg with the gun.

BY MS. ADDISON: –

Q Do you recall, Mr. Jones, how many gunshots you heard before you got out of the truck?

A About one or two.

Q Did you hear any more after that?

A When I was coming around, some more.

Q Do you recall how many?

A About two or three, something like that.

Q Couldn't you see Mr. Atkins when you came around the truck?

A Yes, I could.

Q And where was he?

A By this time the shooting had stopped. So he was probably midway of the truck right here, somewhere around (indicating). Somewhere on the driver's [140] side.

MS. ADDISON: Your Honor, for the record, I would state that Mr. "Atkins" is indicating on the previous photograph of the truck, I believe that's Commonwealth's Exhibit Number Two.



THE COURT: The Court couldn't see where he was indicating, so – I couldn't see where he was indicating.

MS. ADDISON: I would ask, with the Court's permission, that he can mark –

THE COURT: That's fine.

BY MS. ADDISON:

Q On which side?

A On the passenger side.

THE COURT: Would you mark it with an X?

(The witness marked the photograph.)

THE COURT: Is that visible? I can't see.

(The photograph was exhibited to the Court by the witness.)

THE COURT: All right. It's visible.

BY MS. ADDISON:

Q Other than the shots that you heard as [141] you were coming around the truck, did you hear anything else?

A "Ow, ow, why you shoot me? Why you shoot me, why you start shooting me?"

Q Could you tell who was saying that?

A Mr. Nesbitt was saying that.

Q How, if you recall, was Mr. Nesbitt's position after you came around the back of the truck?

A He was laying in a fetal position.

Q And where, in relation to Mr. Nesbitt, was Daryl Atkins at that time, if you recall?

A He was on the side of him when I was coming around.

Q Do you know about how far away?

A About two or three feet.

Q So we know that we're talking about the same scale, could you point to something in the Courtroom that you think is about the same distance?

A From me to the jury box.

Q The railing?

A Yes, it is.

MS. ADDISON: I'm not sure if the Court is as familiar with the measurements in this new Courtroom as in the old –

THE COURT: From where you are sitting [142] to the edge of the railing on the jury box?

THE WITNESS: Yes, it is.

THE COURT: The Court would estimate that to be five feet. Is that a fair estimate?

MR. SAUNDERS: Yes, sir, I think it is, your Honor.

BY MS. ADDISON:

Q And what, again, did you do when you came around the truck?



A I was trying to grab for the gun, but I got Mr. Nesbitt's – Mr. Atkins' hand, so we started tussling for the gun.

Q Can you describe how you tussled with him, what you were doing, what he was doing?

A Yes, I can. We was just – my hand was in his and we was just tussling over the gun.

Q How – how were you positioned, if you recall?

A I was in front of him. We was face-to-face tussling over it.

Q And where was the gun?

A It was in Mr. Atkins' hand.

Q And where were your hands?

A Mines was over his.

Q And what happened when you grabbed [143] him?

A He just went off and he said, "Ow, ow," and he dropped the gun.

Q And what did you do?

A I picked it up.

Q Until that moment when you picked that gun up, had you held onto it at any other point?

A No, I had not.

Q What did you do next?

A I put it in behind the driver's seat.

Q The gun?

A Yes.

Q And what happened next?

A Then I climbed in the same way I got out.

Q How was that?

A From the window of the driver's side.

Q Why did you do that?

A Why I do it, to get back in to drive off.

Q And did you, in fact, drive off?

A Yes, I did.

Q Who was in the truck with you as you drove off?

A Mr. Atkins.

[144] Q And where was Mr. Nesbitt?

A He was still laying on the ground.

MS. ADDISON: Your Honor, I would ask that you show Mr. Jones Commonwealth's Exhibit Number 13.

(A photograph was exhibited to Defense Counsel and then to the witness.)

MS. ADDISON:

Q Do you recognize that photograph, Mr. Jones?

A It's Mr. Nesbitt.

Q And what's his condition?

A Looks like he's dead.



Q Does that look the same or different than the way he appeared when you and Daryl Atkins drove away from him?

A Looks the same.

Q Did you ever touch him before you drove away from there?

A No, I did not.

Q What did you do next?

A I had to drive Mr. Atkins to Riverside Hospital.

Q Do you recall the route that you took to Riverside Hospital?

[145] A I think it was 64.

Q Did you and Mr. Atkins have any conversation from Crafford Road until you got to Riverside Hospital?

MR. ROGERS: Objection, if the Court please. That name of a road has not come up in this case involving this witness.

BY MS. ADDISON:

Q Until you got to the spot that you indicated –

THE COURT: Sustain the objection.

BY MS. ADDISON:

Q When you left the spot that you indicated on the aerial map where Mr. Nesbitt's body was until you got to Riverside Hospital, did you and Daryl Atkins have any conversation?

A We was cursing at each other. And he was saying, why did I shoot him. And I asked him why did he shoot Mr. Nesbitt.

Q Where, if you recall, was Daryl Atkins sitting in the truck?

A On the passenger side.

Q And what, if anything, was he doing?

A I can't recall.

Q What happened when you arrived at the [146] hospital?

A He started to get out. Before he could leave, I asked him for some money.

Q Do you know where at the hospital you were?

A Yes.

Q Where was that?

A At the emergency room.

Q Do you recall how close to the emergency room door you stopped?

A It was in the drive-through at the emergency room.

Q And when you asked Daryl Atkins for money, what did he do or say?

A He just gave me some money, closed the door, and hopped off.

Q Where was the gun at that point, Mr. Jones?



A It was still behind the driver's seat.

Q Did you and Daryl Atkins ever discuss what you were going to do or where you were going to go?

A No, we did not.

Q After that time, when was the next time that you talked to Daryl Atkins?

A I haven't since – we haven't talked.

[147] Q Do you recall what time it was when you dropped him off at Riverside Hospital emergency room?

A About 1:20.

Q And where did you go when you left?

A I went to King James Motel.

Q Where is that?

A It's in Newport News.

Q Why did you go there?

A To get a room.

Q How did you get there from the hospital?

A Drove Mr. Nesbitt's truck.

Q And what, if anything, happened when you got to the King James Motel?

A I asked this lady to get me this room. She got me a room. I stayed there.

Q What happened with the truck?

A I parked it.

Q Where?

A In the King James.

Q What, if anything, did you do with the gun?

A I didn't do nothing with it. It was still in the truck.

Q You didn't take it with you?

[148] A No, I didn't.

Q Did you tell anyone where it was?

A No, I did not.

Q Was the radio that you and Daryl Atkins discussed in the truck or not when you parked it at the King James?

A It was still in the truck.

Q Did you tell anyone it was there?

A No, I did not.

Q Did you have keys to the truck?

A No, I left them in the truck.

Q And you didn't tell anyone that you left the keys in there?

A No, I did not.

Q Did you ever go back and get in Eric Nesbitt's truck again?

A No, I did not.

Q How long did you stay at the King James Motel?



A Until Sunday. Then I went to the Thrift Inn.

Q Where is that?

A Still on Jefferson, in Newport News.

THE COURT: Repeat the answer. Where did you go after you left the King James?

[149] THE WITNESS: To the Thrift Inn Motel.

BY MS. ADDISON:

Q Why did you go there?

A I wanted to get away from the truck.

Q How long did you stay at the Thrift Inn?

A A day.

Q And where did you go from there?

A Back to the King James.

Q Do you know whether or not the truck was still there when you returned to the King James?

A I'm not sure. I think it was gone.

Q Did you go and check?

A No, I did not.

Q And throughout those couple of days, did you talk with anyone about what had happened?

A No, I did not.

Q Did you meet anyone else while you were staying at those places?

A Yes, I did. I met this guy named Red and his girlfriend.

Q But you never talked to them about what had happened?

A No, I did not.

Q Did you make any attempt to get ahold [150] of Daryl Atkins?

A Yes, I did.

Q When was that, if you recall?

A It was at the King James. I called him on the pay phone, but he wasn't home.

Q Do you know what day that was?

A No, I do not.

Q And what happened next?

A Then I just went to the Budget Inn, that's a motel, and then went back to the King James. And that's where the FBI or the SWAT team got me at.

Q You were arrested?

A Yes, I was.

Q You've been in jail ever since then, is that correct?

A Yes, I have.

Q During those several days when you were going from the various motels, did you do anything to change your appearance?

A Yes, I did.



Q What was that?

A I cut all my hair off.

Q Why was that?

A To change my appearance.

Q Mr. Jones, have you ever been involved [151] in anything like that before?

A No, I have not.

Q And up until the point when you pick it up off the ground, did you ever have a gun in your hand?

A No, I did not.

Q Who, if you know, shot Eric Nesbitt?

A Mr. Atkins.

MS. ADDISON: Thank you. I have no further questions.

THE COURT: Mr. Rogers, you may cross-examine.

MR. ROGERS: Thank you, your Honor.

CROSS-EXAMINATION

BY MR. ROGERS:

Q Mr. Jones, how much money did you have when you left Riverside Hospital that night?

A Seventy dollars.

Q Seventy dollars?

A Yeah.

Q Okay. So you knew two hundred dollars had come out the ATM, is that right?

A Yes, I did.

[152] Q And there had been some other money from Mr. Nesbitt before, is that right?

A Yes, it was.

Q Okay. You hadn't stopped to make any purchases after that money was taken from Mr. Nesbitt, had you?

A No, I didn't.

Q Okay. And so when you left the hospital, having dropped off Mr. Atkins that night, you got seventy dollars?

A Yes, I did.

Q Okay. Then from there you went down to the King James Motel?

A Yes, I did.

Q Okay. How much did it cost you for the room that night?

A I can't recall.

Q Can't recall. How many nights were you there?

A Two nights.

Q Two nights. So after two nights it got on your conscience, is that right, and so you decided you would change locations, and that's when you went down to the Thrift Inn?



A No.

[153] Q You didn't?

A I said I stayed there one night.

Q One night?

A Then I went to the Thrift Inn, then came back to the King James.

Q Okay. So you don't know how much it was for the King James for one night?

A No, I do not.

Q How much was it at the Thrift Inn for one night?

A I can't recall.

Q How much was it when you returned to the King James the next night, still can't recall?

A I didn't pay for it.

Q You didn't pay for it, okay.

A No, I did not.

Q How about at the Budget Inn Motel?

A I didn't pay for that neither.

Q You didn't pay for that. So did you come up with friends who were kind enough to pay your hotel bills for four or five days, Mr. Jones?

A Yes, I did.

Q You did. That's nice. Who were the friends that paid your way at the King James and these other motels, sir?

[154] A This guy named Red.

Q Red. What's Red's last name?

A I can't recall.

Q What's his real name? Is his real name Red or is that his nickname?

A I think that was his nickname.

Q Think it's his nickname, you're not sure?

A Yes, I am.

Q You are sure?

A That's his nickname.

Q That's his nickname. How long had you known Red?

A Couple of days.

Q Couple of days. So when did you meet him?

A At the King James.

Q At the King James a couple days before this night of the ATM and the robbery and the murder and all that?

A No.

Q Oh, it wasn't when you met him then? When did you meet him?

A That Sunday.

Q That Sunday. The Sunday before this [155] happened or the Sunday after this happened?

A The Sunday after this happened.



Q The Sunday after this happened. Okay my question is, what night did this robbery take place?

A On a Saturday.

Q On Saturday. Okay.

A Morning.

Q Saturday morning. And you didn't meet Red, your good friend, until the next day, is that right?

A Sunday.

Q Sunday, the next day, is that right?

A Yes.

Q So he couldn't have paid your motel room on Saturday night since you didn't even meet him until the next day, isn't that true?

A I just said Sunday.

Q Let me ask you this, Mr. Jones. When you check into a motel, do they let you spend the night before you pay for your room?

A First of all, I said the lady bought the room. I gave her the money to buy the room.

Q How much money – excuse me. How much money did you give the lady? Now, the lady is not Red, that right?

A She's not.

[156] Q She's not the person known as Red?

A She's not.

Q How much money did you give the lady to get your room at the King James for Saturday night?

A I think thirty dollars. I can't recall, like I said.

Q You think thirty dollars. Okay. Did she go on with you when you changed from the King James over to the Thrift?

A No, she did not.

Q Did not. Okay. Did she stay at the room with you that night?

A No, she did not.

Q Did not. Had you known her before that night?

A No, I did not.

Q Okay. Do you know her name?

A I think it's Jackie or something.

Q Jackie or something. But you didn't know her before that night?

A No, I did not.

Q Could you explain how you arranged with this person you did not know, whose name you think is Jackie, "Would you please, ma'am," who I've never met, "get me a motel room tonight?" How did that happen?

[157] A She was on the balcony. After I parked the truck, she was on the balcony and I asked her to get me a room.

Q You asked her – she was on the balcony and you asked her to get you a room?



A Yes, sir.

Q Okay. Did she became [sic] your good friend?

A No, she did not.

Q You didn't see her any more after that?

A No, I did not.

Q And then you had a new, good friend the next night who was Red, is that right?

A Yes.

Q Okay. Did Red help you get the room at the Thrift Inn?

A He bought it.

Q He bought the room?

A Yes, he did.

Q Okay. Did he stay there at the room?

A Yes, he did.

Q Okay. Who else – you and Red and who else stayed at the room at the Thrift Inn that night?

A His girlfriend.

[158] Q His girlfriend. Do you know who she is?

A No, I do not.

Q Do not. Okay. And he paid for the room?

A Yes, he did.

Q Did you sort of help him on the cost of the room?

A Sort of.

Q A little bit. How much did you give Red?

A About ten dollars or something.

Q Ten dollars. Okay. So after the night at the Thrift Inn with Red, where you helped him with a little bit of money, about ten dollars, you then went back to the King James?

A Yes, I did.

Q How did you get your room then, Mr. Jones?

A Like I said, Red paid for it.

Q So Red – now Red has paid for the Thrift Inn, you're now going back to the King James, is that right?

A That's right.

Q Red paid for that, too?

[159] A Yes, he did.

Q So he was a real good friend?

A Yes, he was.

Q Okay. Did his girlfriend go with you – Red and you back to the motel?



A Yes, she did.

Q Okay. Did you help him with anything towards the room on that third night back at – your second time back at the King James?

A Yes, I did.

Q How much did you help him with?

A I just bought the food from McDonald's.

Q Bought the food. How much did it cost you for the food at McDonald's?

A I can't recall.

Q Okay. After that, you then went where?

A After that, we went – we was at the King James, we went to the Budget after that.

Q To the Budget. Okay. Did Red go, too?

A Yes, he did.

Q Girlfriend go, too?

A Yes, she did.

[160] Q Okay. Who paid for the room?

A Red did.

Q Okay. Did you help him out at that time?

A No, I did not.

Q You did not. Okay. And so after going off to the Budget, then you go back to the King James the third time, is that right?

A Yes, I did.

Q Did Red go with you?

A Yes, he did.

Q Did the girlfriend go with y'all?

A Yes.

Q Who paid for the room then?

A He did.

Q He did. Did you contribute to the room?

A No, I did not.

Q Did you contribute anything else by way of money to Red or his girlfriend, or you spend any money yourself from the time of Saturday up until your third time back at the King James, where you were arrested by SWAT?

A Well, I went back home to my father's house and got some money.

[161] Q Got some money from your father's house?

A Yes, I did.

Q Okay.

A From my father.

Q From your father. Okay. Did I understand from your earlier testimony, Mr. Jones, that you did not know that a robbery was going to be going down at the 7-Eleven when you and Mr. Atkins went down there that night?



A That's true.

Q You did not know?

A No, I did not.

Q Okay. You testified that he had panhandled a couple of people and gotten money from maybe one or two, is that right?

A Yes, he did.

Q Had you walked over to those people to see what was going on?

A No, I did not.

Q Okay. But when he walked over to the side of Mr. Nesbitt's truck, that's when you came over, is that right?

A Yes, I did.

Q Okay. Did you think a robbery was [162] going to go down then?

A No, I did not.

Q Okay. And he told you to get in the truck?

A Yes, he did.

Q And you did get in the truck on the driver's side, is that right?

A I did.

Q And you drove?

A I did.

Q And you drove back into the neighborhood, is that right?

A That's true.

Q What were you – where were you driving back into the neighborhood, for what reason?

A Mr. Atkins, when we went off, he was trying to get the money from him.

Q Trying to get the money from him?

A Uh-huh.

Q Okay. Did he do that?

A Yes, he did.

Q Okay. And then you sideswiped a parked car, is that right?

A A parked vehicle, I don't know what it was.

[163] Q A parked vehicle. Excuse me. You don't even know whether it was a car, truck, or what?

A No.

Q Okay. Then you went over to the school, is that what you testified?

A No, I did not.

Q After you sideswiped a car?

A No, I didn't.

Q Where did you go?

A After I sideswiped the car, we went to the bank.

Q To the bank. Okay. Now, was the – was the driver's window open or closed when you went to the bank?



A It was open.

Q Open. Okay. So it was rolled down?

A When we got there.

Q Okay. When you got there. Was it open before that time?

A I can't recall.

Q Okay. Do you remember rolling down the window of the truck?

A When we got to the bank?

Q At any time?

A Yes.

[164] Q When was that?

A When I was trying to get out when Mr. Atkins was shooting Mr. Nesbitt.

Q Okay. So you're saying that the window was up at that point?

A Yes.

Q It was. Okay. But the window was down when you got to the Crestar ATM, is that right?

A I think I rolled it down.

Q You think you rolled it down. Okay. Where was the ATM card when y'all got to Crestar?

A It was in Mr. Nesbitt's wallet.

Q And who had his wallet?

A He did.

Q He did. Okay. Who took the ATM card out of the wallet?

A He did.

Q Okay. And who used the machine, the ATM machine to get the money out?

A He did.

Q Okay. Leaned across you, is that right?

A Excuse me?

Q Did he lean across you to do that?

A Yes, he did.

[165] Q Okay. You knew what was going on at that point, didn't you?

A Yes, I did.

Q You knew that he'd been robbed and you'd been a part of it?

A Yes, I did.

Q And you knew that Daryl Atkins had been part of that?

A Yes, I did.

Q Did you understand that an abduction had taken place by that time?

A No, I did not.

Q Did not. You learned that later?



A Yes, I did.

Q Okay. Now, you testified, Mr. Jones, that you had lived in Hampton and known Mr. Atkins for just a couple of months, is that right?

A Yes, sir.

Q Where had you lived before that?

A In Gloucester.

Q In Gloucester. Okay. How long had you lived in Gloucester?

A About thirteen, fourteen years.

Q Thirteen, fourteen years. Okay. During the time of that thirteen or fourteen years, [166] Mr. Jones, that you were living in Gloucester, during a part of that time, did you have a driver's license?

A Yes, I did.

Q Did you drive across the Coleman Bridge and up Route 17 to get from Gloucester over to York County?

A Yes, I did.

Q Okay. And I believe you said that the road that you turned off of, that dark, curvy road, that you had driven before, isn't that right?

A No, I did not.

Q You did not?

A No, I did not.

Q You had never driven that road before?

A No, I haven't.

Q Had you driven up Route 17?

A Yes, I have.

Q Okay. And you knew where Riverside Hospital was, is that right?

A Yes, I did.

Q Okay. What street is that off of?

A Can't recall.

Q Can't recall?

A No, I can't.

Q How do you get there from where you [167] were?

A From Jefferson.

Q From Jefferson Avenue?

A We took 64 to Jefferson and got off.

Q Took 64 to Jefferson –

A Got off at Newport News.

Q Got off at Jefferson, Newport News, and then went down to where?

A Went across – I can't recall. I know how to get there.

Q You know how to get there?

A Yes, I do.



Q Okay. Because you didn't need directions to get there, did you?

A No, I didn't.

Q No, you knew how to drive from that curvy road all the way to Riverside Hospital without any directions, didn't you?

A I knew how to get back out of the curvy road.

Q Mr. Jones, you've said that you had seen these exhibits before?

A Yes.

Q Is that right? The one that's in front – if the Court please, –

[168] MS. ADDISON: Your Honor, if we might, I'd ask if I can move these monitors out of the way so I can sit.

THE COURT: If you're not going to use them.

MR. ROGERS: No, I'm not. No, I'm not.

THE COURT: I didn't know whether you wanted to go back over the exhibit.

MR. ROGERS: No, I don't need to do that on the ATM.

THE COURT: If you will take time out just a second, we'll get them to move. How long – just roll them over in the corner. It won't take long.

MS. ADDISON: They are all attached, but –

THE COURT: May have to unplug them, probably.

MR. HAHN: They have to be moved all together.

THE COURT: Okay. You didn't unmike yourself, did you, Mr. Hahn?

MR. HAHN: No, sir, I didn't have enough intelligence to figure out how to do that.

MS. ADDISON: I apologize for doing [169] this right in the middle of Mr. Rogers' cross-examination I just didn't want to stand during the entire thing. Thank you.

MR. ROGERS: Yes, ma'am.

THE COURT: Thank you, sir.

MR. ROGERS: Ms. Commonwealth, do you know the number of the purple aerial map?

MS. ADDISON: The purple map is Number 6. The smaller one is Number 5.

MR. ROGERS: Okay. Thank you, very much.

BY MR. ROGERS:

Q Okay. Mr. Jones, as to the purple map there on the easel that's Commonwealth Exhibit Number 6, you have seen that before, is that correct?

A Yes, I have.

Q And where did you see that, sir?

A In the Courtroom.

Q In the Courtroom?

A Yes.



Q Had you seen that before today?

A Yes, I have.

Q And where was that?

A In the Courtroom.

Q In the Courtroom. Okay. And what [170] proceeding in the Courtroom?

A Trying to get me prepared for this.

Q Okay. Okay. How long ago was that?

A Last time was last Thursday.

Q Last Thursday. How about before that?

A The 28th.

Q The 28th of January?

A Yeah.

Q How many – was that in this Courtroom?

A Yes, it was.

Q Okay. How many times have you been in this Courtroom preparing for your testimony today?

A Two.

Q Two times? Okay. As to Commonwealth Exhibit Number 6, sir, what is that? Do you know the names of that location?

A Are you talking about this (indicating)?

Q Yes, sir, the purple one right there in front, Commonwealth Exhibit Number 6.

A Do I know the names?

Q Uh-huh.

A I know them now.

Q Know them since when?

[171] A Since this case has been going on.

Q Since you've been prepared for this case?

A If that's what you want to call it.

Q Okay. Well, I just want you to tell the truth, Mr. Jones. So you have – you have known the name of that since you've been prepared for this case, right?

A Yes.

Q And what is the name of that, sir?

A It's Crafford Road.

Q Crafford Road. Would you stand up with your pointer and point where Crafford Road is on Commonwealth Exhibit Number 6, sir?

(The witness indicated on the map.)

BY MR. ROGERS:

Q Okay. And where there's that little Y in the road, what is the name of that road, that short one that goes off to that square thing, do you know what that's called?

A No, I do not.

Q You do not?



A No.

Q You weren't – you weren't told that?

A No, I wasn't.

[172] Q Okay. You can have a seat. Thank you, Mr. Jones.

A You're welcome.

THE COURT: The witness pointed to an area middle left of Exhibit Number 6, which is a white area on the diagram.

BY MR. ROGERS:

Q But you were told the name that that long one that you pointed out just now on 6, that the name of that road was Crafford Road, is that right?

A Yes, it was.

Q Who told you that, sir?

A The Commonwealth Attorney.

MR. ROGERS: The Commonwealth Attorney. Okay.

Mr. Bailiff, could you put that down, please, sir?

BY MR. ROGERS:

Q Now, have you likewise seen this exhibit?

A Yes, I have.

Q Who showed that to you?

A The Commonwealth.

Q Okay. You know the name of that section that's in the – that's Commonwealth Exhibit [173] Number 5? Yeah. Do you know the name of that road that's in that rectangle that's bordered in black down at the bottom?

A I believe that's Crafford Road.

Q Crafford Road. Okay. And when you were going to what you now know as Crafford Road, you said that you came off of what to get onto Crafford Road?

A 64.

Q 64. Do you see that on there?

A No, I do not.

Q Okay. Which direction, if you know, is Route 64?

A It's not on the board.

Q It's not on the board. Okay. Do you know the names of any of the other streets that are shown on that exhibit?

A Yes, I do.

Q What's that?

A I see 17.

Q 17. Where is that, if you would point, Mr. Jones?

(The witness indicated on the map.)

BY MR. ROGERS:

Q Okay. Is it the one that goes up and [174] down or the one that goes left and right?

A Going up and down.



MR. ROGERS: One that goes up and down.

If the Court please, for the record, the witness is pointing out on the right-hand side of that Commonwealth's exhibit a long roadway that goes almost from the top in a bow shape almost down to the bottom.

BY MR. ROGERS:

Q Now, Mr. Jones, you talked not only with the Commonwealth in this case, but you also talked with some investigators in York County, is that right?

A Just one.

Q Just one. And what was his name?

A Detective Lyons.

Q Okay. And you recall telling him that when you came off of the interstate you went down by the old York jail?

A No, I did not.

Q Does the name Krinick mean anything to you, sir, a lady by the name of Krinick?

A Yes, it do.

Q Did you likewise speak to her while you – while Mr. Lyons was present?

A Yes, I did.

[175] Q Do you recall that being August 5th - 6th of 1997?

A I don't know the exact date.

Q Don't know the exact date. Let me ask you this, Mr. Jones, had you spoken to the police or the Commonwealth's Attorney's Office, or any representative that office, before you spoke to Detective Lyons on that occasion, last year in 1997?

A No.

Q Okay. So for this – all this robbery and shooting and everything else went down in August of 1996, is that right?

A Yes, it did.

Q And you did not say anything to the police or representatives of the Commonwealth Attorney's office until a year later, is that right?

A That's correct.

Q And at the time when you spoke to Investigator Lyons, was anyone else present?

A My lawyers.

Q Your lawyers. Okay. How many did have?

A One that showed up.

Q One showed up. Okay. And anybody else there?

[176] A Ms. Addison.

Q Okay. Ms. Addison. Anybody else from the Commonwealth Attorney's Office?

A I can't recall.

Q Do you remember a Miss Krinick?



A Yes.

Q Okay. Was she there, to your recollection?

A I believe.

Q Okay. Do you remember –

MR. ROGERS: For reference, Madam Commonwealth, page twenty-five of the transcript.

BY MR. ROGERS:

Q Do you remember a question from – it says, Krinick: Okay. Did he say anything about you were going, it was a place he knew, had been there before, anything like that?

Jones: Your answer: Hmm, well, first, initially – initially Yorktown. He said his grandfather lived out there or something, something like that is what he said.

Do you remember that?

A Yes.

Q Okay. And up a little bit from that, do you remember on how you got there? It says, Krinick: [177] All right. When you got off the exit, where'd you go? And then it shows, Jones: I know we went past the 7-Eleven. Might have been a Little Sue, I don't – we passed there, went past the school, turned at a light, turned at – uh – just before you go into uh – Gloucester, uh – it was in Yorktown, right around old jail.

Do you remember that?

A No.

Q You don't remember that?

A No, I don't.

Q Okay. So do you remember getting down to Yorktown? Did you know where the jail was in Yorktown?

A Yes, I did.

Q Okay. Did you go down to the jail at Yorktown that night?

A No, we did not.

Q Now, Mr. Jones, you have admitted that you – or stated, excuse me, that you did not make a statement to the police or to the Commonwealth Attorney until August of 1997, which was a year after the event, is that right?

A Uh-huh.

Q Do you recall being asked if you had told anybody else about this, such as your mother?

[178] A No, I did not tell her.

Q Okay. Do you remember being asked about it?

A I can't recall.

Q Okay. But you said you did not tell your mother, is that right?

A That's right.

Q You didn't tell your mother anything about this, is that true?

A That is correct.



Q And you likewise didn't tell – you have a wife, is that correct?

A Yes, I do.

Q And you didn't tell your wife, isn't that true?

A That is true.

Q And what I mean by that, Mr. Jones, is that you did not tell either your wife or your mother in over a year after this thing went down that you did not shoot Eric Nesbitt, did you?

A I didn't tell them nothing about the case.

Q Didn't tell them nothing.

Back at the scene, where the shooting happened, at the time when you jumped out of the driver's [179] window, did you try to get the door open?

A Yes, I did.

Q Could you get it open?

A No, I could not.

Q So you went out the window?

A That is correct.

Q Was that headfirst or feetfirst?

A Head, hands.

Q Head, hands first. And I believe you testified that you landed on your hands and knees?

A That's correct.

Q Was that a gravel road?

A Yes, it was.

Q Okay. Did you scrape yourself up at all by jumping out this window headfirst and landing on your hands and knees?

A I could have. I don't know.

Q You don't know?

A No, I was hysterical.

Q You were hysterical?

A Yes, I was.

Q Okay. And then you said you ran around the back of the pickup truck, is that right?

A That's right.

Q And your purpose was what?

[180] A To get the gun away from Mr. Atkins.

Q Okay. Why did you want to do that?

A Because he was shooting the gun, that's why.

Q He was shooting the gun. Okay. When you got around, the gun had been shot, is that right, a lot of times?

A Yes.

Q Okay. And you said that when you got around the truck, where was Mr. Nesbitt?

A He was on the ground.



Q On the ground. And where was Mr. Atkins?

A He was about five – five feet away from him.

Q Five feet away. Okay. And you then grabbed him?

A Yes, I did.

Q And describe again how he was standing when you grabbed him.

A He was standing – he was standing about rear of the truck, by the tires.

Q He was standing at the rear of the truck by the tires?

A Yes, by the tires.

[181] Q On the passenger side?

A Yes, sir.

Q How was his – what positions were his hands in?

A Still pointing at Mr. Nesbitt.

Q And he had – he had the gun in his hand?

A Yes, he did.

Q How could you see it?

A I could see him because of the truck door was still open.

Q But he's at the back wheel, is that right?

A Yes, he is.

Q And the only light was up in the cab?

A Yes, sir.

Q And you saw him with the gun in his hand?

A Yes, sir.

Q Which hand?

A I can't recall which hand.

Q You remember when you talked to the Commonwealth and Inspector Lyons – or Investigator Lyons back in August of '97 what hands, didn't you, and told them it was in his left hand? Do you remember that?

[182] A Probably did.

Q Probably did. Let me ask you a silly question, Mr. Jones. Is your memory better now or was your memory better a year – or back in August of '97?

A I don't know.

Q You don't know?

A I've got a bad memory.

Q Got a bad memory. Okay. So you could have said – you wouldn't deny that you said that Mr. Atkins had the gun in his left hand?

A I'm not going to deny it.

Q Okay. And you say it was pointing at Mr. Nesbitt?

A Yes, sir.

Q And Mr. Nesbitt was on the ground?

A Yes, sir.



Q So when you came up and he's holding it in his left hand, pointing down at Mr. Nesbitt, did you come up behind him?

A I came around.

Q Okay. You came around the truck and then around Mr. Atkins, so you got in front of him?

A Yes, I did.

Q And the gun is now pointing at you?

A I know.

[183] Q Is that right?

A No, it was still pointing at the ground then, we were still tussling over it, and it went up. His hands went up in the air, then went back down, and that's when he dropped it.

Q Okay. His hands went up in the air, now y'all are tussling?

A Uh-huh.

Q Y'all are face-to-face, is that what you said?

A That's what I said.

Q And then the hands came down?

A Yes, sir.

Q And he was standing up?

A Yes, sir.

Q And you were standing up?

A Yes, sir.

Q And y'all were face-to-face?

A Yes, sir.

Q And the gun goes off?

A Yes, sir.

Q And then he says, "Ow"?

A Ow. He's yelling. I didn't say he just said ow.

Q Yelling. And then got mad, cursing [184] and everything?

A Yes, sir.

Q Okay. And you heard how many shots at that point?

A At that point?

Q Yeah.

A At least seven at that point.

Q No, I don't mean by that point. I mean, when you were tussling with him, how many shots did you hear?

A One.

Q One. Okay. You heard one shot and the gun – he's got it in his left hand and now it's pointed down, is that right?

A Uh-huh.

Q And you heard one gunshot go off?

A Yes.



Q Was that – that was the last shot you heard, is that right?

A That is.

Q Okay. Okay. And then, what, you got in the truck?

A I went back around the truck and got in.

Q And he got back in the truck?

[185] A Yes, sir.

Q And was sitting on the passenger side?

A Yes, sir.

Q And did you see that he was bleeding or that he had been shot?

A I couldn't see it.

Q You couldn't see it?

A No, sir.

Q The light was on in the truck, wasn't it?

A Yes, sir. I was pulling off as soon as I got in then.

Q Mr. Jones, you testified that you jumped through the window to go around to stop Mr. Nesbitt from being killed, is that right?

A I don't recall saying that.

Q Well, let me rephrase it another way. When you jumped out of the driver's side window, as you've testified, to run around and stop the shooting and tussle with Mr. Atkins, why did you go around there?

A To stop him from killing him.

Q Right. To stop him from killing Mr. Nesbitt, right?

A That's right.

Q And then one gunshot went off that [186] wounded Nesbitt – that wounded Daryl, is that right, Atkins?

A Yes.

Q And then y'all got in the truck and left?

A Yes.

Q And you've testified, did you not, you didn't touch Mr. Nesbitt?

A Yes, I did.

Q You did testify or you did touch him?

A I did not touch him.

Q Did not touch him. Mr. Jones, did your concern just go away? In other words, you were concerned about making sure that Nesbitt was not killed, and then when the shooting stops you don't even check him, is that right?

A I wasn't going to check him because he was bleeding too bad. I wasn't going over there to see if he was dead or not.

Q Yeah, you didn't want to go do that, did you?

A No, sir.

Q And you didn't want to go around and help him, did you?



A No, I did not.

[187] Q No. Because you went around, did you not, sir, because that's where you were when you pulled the gun and started shooting him, isn't it?

A No, that's where your client is.

Q Uh-huh. You were outside of the driver's door when this tussle went on, is that right?

A The driver's door?

Q The passenger door. Excuse me. You were outside of the area of the passenger door when the shooting went on, is that right?

A That is correct.

Q And where do you say Mr. Atkins was?

A I said he was by the driver's wheel – behind the passenger – behind the truck by the wheel.

Q Behind the truck by the wheel. And that's where he was when all the shooting took place?

A I can't recall where he was.

Q You can't recall. Oh. Did you say something about some shots going around in the truck?

A Yes, I did.

Q Where was – where was Mr. Atkins then?

A I couldn't see him because of Mr. Nesbitt.

Q Where was Mr. Nesbitt at the time?

[188] A He was about five feet away from the truck.

Q Five feet away. The passenger door is open?

A Yes, it is.

Q Mr. Nesbitt is about five feet away?

A Yes.

Q And where – and you couldn't see Mr. Atkins?

A No, I could not.

Q So he wasn't behind Mr. Nesbitt, away from the truck?

A Like I say, I couldn't see him.

Q Couldn't see. But you heard bullets come in?

A Yes, I did.

Q Okay. Now, you had seen yourself on TV, is that right?

A That is correct.

Q You had seen Mr. Atkins on TV, is that right?

A That is right.

Q Uh-huh. That was the first time was about the ATM, is that right?

A Yes, sir.

[189] Q And you were also on TV talking to a reporter for the TV station?

A That's right.

Q You also saw a report on TV where Mr. Atkins was talking to a reporter of the TV station, that right?



A No, it is not.

Q It's not right? Okay. Now, Mr. Jones, you knew, did you not, that after Mr. Atkins was arrested, he made a statement to the police?

A I don't know. I didn't recall that.

Q Let me rephrase it. At any time after your arrest, did you learn that Daryl Atkins had made a statement to the police?

A Yes.

Q Yes? Is that right?

A Yes.

Q When was that?

A I can't recall, like I said.

Q You can recall that that was before you made your statement, isn't that true?

A That is true.

Q Okay. Now, also, you knew that there had been some state forensics tests made, didn't you know that, as to bullets and blood and clothes and other stuff [190] like that?

A Yes.

Q And you had seen the reports?

A No, I had not.

Q You had not. You had discussed the reports?

A No.

Q You had not?

A No.

Q Well, how did you know that there were those tests then, sir?

A Because I was in Court when the Judge said something about it.

Q Okay. So you did know before you made your statement what statement Daryl Atkins has made, is that right?

A Say again?

Q You did know that Daryl Atkins had made a statement to the police before you made your statement to the police?

A That is true.

Q And you knew in that statement that he was saying that you were the one who did the shooting, is that right?

A That is correct.

[191] MR. ROGERS: Okay. Your Honor, if I could see Commonwealth Exhibit Number 69.

THE COURT: Yes, sir. I have not marked that as an exhibit yet. It has been identified. It has not been offered into evidence yet.

MR. ROGERS: Okay.

MS. ADDISON: I don't believe that there is any objection.



MR. ROGERS: Move it be admitted then as Commonwealth Exhibit 69, your Honor.

THE COURT: All right. Without objection of the Defense, the Court will mark Commonwealth's Exhibit 69 filed and make it a part of the evidence in this case.

MS. ADDISON: Thank you, your Honor. (Commonwealth's Exhibit Number 69 was received in evidence.)

THE COURT: All right. Now you can see it.

MS. ADDISON: Thank you, your Honor.

MR. ROGERS: If you would put that over in front of Mr. Jones, I'd appreciate it, Sheriff.

THE BAILIFF: Yes, sir.

(A document handed to the witness.)

[192] BY MR. ROGERS:

Q Mr. Jones, you can read and write the English language, is that right, sir?

A Somewhat.

Q Somewhat. Okay. Well, if you would look at Commonwealth Exhibit Number 69, and stop me if I misquote anything. Memorandum of plea agreement. This memorandum of plea agreement is presented to the Circuit Court for the County of York – or County of York County and the City of Poquoson in compliance with Rule 3A:8C2 of the Rules of the Supreme Court of Virginia. Part one: The Defendant. Do you know who that refers to?

A Yes.

Q Who is that?

A Me.

Q You. Okay. Currently stands charged with murder, indictment number one.

At that time, Mr. Jones, what kind of murder were you charged with?

MS. ADDISON: Your Honor, I object. I don't know if he knows what time he's referring to.

THE COURT: Put a time frame around it.

MR. ROGERS: All righty.

BY MR. ROGERS:

[193] Q Sometime on or before September 5th, 1997, when you signed this, 1997, September 5th, did you know what you were charged with at that time, Mr. Jones?

A Yes, I did.

Q Okay. What kind of murder was that?

MS. ADDISON: Your Honor, if I might for a moment. Again we're going into an area that was covered by pretrial motions, before we have another episode of –

THE COURT: All right. It's enough time to have the jury take a rest anyway. Why don't we let them recess momentarily, so that we can take this matter up outside of your presence.

Ladies and gentlemen, so I'm going [sic] ask now that you retire to the jury room.



The case has not yet been completed. Do not begin your deliberations. The Court will advise you when it's ready for you to deliberate.

You may retire.

(The jury retired to the jury room.)

THE COURT: All right, Ms. Addison, what's the objection of the Commonwealth?

MS. ADDISON: Well, your Honor, the Court may recall several weeks ago we filed a motion in [194] limine asking the Court to limit Defense Counsel from delving into an area of the change of the charge from the original capital murder charge to murder in the first degree insofar as it was referenced as to why that change was made, other than the plea agreement alone.

I simply want to clarify that any questions about the change of that charge or when he was originally charged with capital murder and what the Commonwealth thought as far as the theory of the case, who was the trigger man, what the investigator may have thought as far as the theory of the case and who was the trigger man, has already been ruled on. He is not to go into that area.

Certainly, he can ask about the – if Mr. Jones understands the difference between the capital murder charge and what he pled to, first degree murder, as part of that plea agreement, but I simply want to make sure that there is no misunderstanding that he is not to inquire or argue about the theory of the Commonwealth's case.

MR. ROGERS: Excuse me, could the witness be removed during this discussion, your Honor?

THE COURT: Certainly.

MR. ROGERS: Okay.

THE COURT: Would you please retire [195] the witness to the appropriate quarters.

THE BAILIFF: Yes, sir.

(The witness was sequestered from the Courtroom.)

MR. ROGERS: Thank you, your Honor.

THE COURT: Thank you. We probably should have done that earlier.

This is the order. This is the motion. Could you get me the order, too? Just tag it – have you got a stickum?

Excuse me, I'm trying to get the Court record so that we can refer without having to guess as to what was done. I can look officially at the Court file, the motions that were filed and the orders that were entered. That will help us resolve these issues.

The Court, with the able help of its Clerk, has got the motion in limine tagged, which was filed by Ms. Addison, on behalf of the Commonwealth, on January 27th, 1998.

Do you all have that before you?

MR. ROGERS: No, sir, but I'm abundantly aware of the motion and the ruling of the Court and the resulting order.

THE COURT: Okay. Let me just refresh the Court's mind then.



[196] All right. Ms. Addison, was there more than one motion in limine filed?

MS. ADDISON: I don't believe so, your Honor, not that was titled that way. I believe there were motions for a pretrial ruling.

THE COURT: On the admissibility of certain evidence, which we covered Tuesday or Wednesday, or whatever it was. Is that right?

MR. ROGERS: This is separate, yes, sir.

THE COURT: All right. The motion in limine the Court has before it is the 27th of January, '98. Is that the same one?

MS. ADDISON: That's correct, your Honor. That was, I believe, the same day as the hearing, the same day the Court entered the order granting the motion.

THE COURT: Would you like to approach to make sure that I'm looking at the right motion, Mr. Rogers?

MR. ROGERS: Yes, sir.

(Counsel for both sides approached the Bench.)

MS. ADDISON: Is there an accompanying order, your Honor?

[197] THE COURT: Well, there's more right back here which have been tagged. Hold on a minute, before you leave. Pretrial motions and then –

MR. HAHN: That's a different –

MR. ROGERS: That's a different one.

MS. ADDISON: This, your Honor.

MR. ROGERS: Thank you. That's it.

MS. ADDISON: Motion in limine.

MR. ROGERS: Yeah, that's it. Right. Right.

THE COURT: Shall we go directly to the order?

(Counsel returned to counsel table.)

MR. ROGERS: Yes, sir.

THE COURT: Ms. Addison, will that cover it if we go directly to the order?

MS. ADDISON: If it will refresh the Court's memory, I'm sure Mr. Rogers and I know exactly what I'm talking about. I'm not sure that I've gotten the Court on the same page

THE COURT: That's what we're trying to do.

Accordingly, this is reading from the Court's order entered on the same date, 27 January, 1998, [198] accordingly, Counsel for the Defendant are ordered to refrain from making any inquiry into any comment upon or argument relative to any, quote, belief, close quote, or, quote, opinion, close quote, that personnel of the Commonwealth's Attorney's Office or the Sheriff's Department may or may not have formed in the course of the investigation and prosecution of this case.

MR. ROGERS: Right.

MS. ADDISON: Your Honor, I'm raising this prematurely or peremptorily in view of what happened the other day, just so that everyone remembers this order



is in place, and we don't have another question hanging out there before the jury that should not have been asked.

THE COURT: All right. I appreciate that.

MR. ROGERS: Your Honor, the question that I inquired of this witness is what he knew as to what degree of murder he was charged.

MS. ADDISON: Again, your Honor –

MR. ROGERS: I understood and accede to the Court's ruling and order that I am not to comment on any opinion or belief of any member or staff of the Commonwealth Attorney's Office nor anyone with the York County or any other police agency. And I will not do that, your Honor, I promise.

[199] THE COURT: Ms. Addison, I thought that the question that he posed was a proper one.

MS. ADDISON: It was, your Honor. I am not objecting to the question he just asked. I'm asking the Court to remind everyone of this order so that an objectionable question and possible answer is put before the jury as almost happened the other day in a similar situation.

THE COURT: All right.

MS. ADDISON: Thank you.

THE COURT: And Mr. Rogers fully and really knows and acknowledges the Court's order.

MR. ROGERS: That's right. Yes, sir.

THE COURT: All right. Well, the Court is going to take a five-minute recess now. Take five or ten minutes, so if you all will stand at rest while the Court is in recess.

(The Court recessed, after which the Court reconvened.)

(The Defendant was present with his counsel following the recess.)

THE COURT: Are you ready to proceed?

MS. ADDISON: Yes, sir.

THE COURT: Get Mr. Jones back on the [200] witness stand and get the jury back, please.

THE CLERK: Will the jury please return to the Courtroom. Will the jury return to the Courtroom.

(The witness returned to the Courtroom and resumed his seat on the witness stand.)

(The jury returned to the Courtroom and resumed their seats in the jury box.)

THE COURT: There are thirteen members in the jury box. Do you waive the poll?

MR. ROGERS: So waive, your Honor.

MS. ADDISON: Yes, sir.

BY MR. ROGERS:

Q Okay, Mr. Jones, we had a little time away from the stand, and I had forgotten to ask you a thing or two, or one thing at least, earlier.

Going back and refreshing your memory as to back in early August of 1997, you remember we talked about



your conversation with some police officers in York County about a statement that you gave, the first statement you gave the police?

A Detective Lyons.

Q Excuse me?

[201] A Detective Lyons.

Q Okay. You remember your discussion that you had with Detective Lyons, and that was the first statement that you gave the police, is that right?

A Yes, it is.

Q And that was in August of 1997?

A Yes.

Q Okay. Do you remember, sir, a question and answer that took place on page – this would be 32, Madam Commonwealth – a question and answer – let's see – Krinick, and this is after all the shooting has taken place, okay? Krinick, question: How did you get back in the truck. Jones: Through the – passenger side.

Do you remember that – making that statement?

A Yes, I do.

Q Okay. So it's your testimony – is that correct?

A No, that is not a correct statement.

Q So you made the miss – you made the statement then that you got back into the truck through the passenger side?

A I did make that statement.

Q But that's not true?

[202] A That is not true.

Q You got back in how?

A Through the driver's side.

Q Through the driver's side?

A Yes.

Q Through the what on the driver's side?

A The window.

Q The window on the driver's side. Okay.

Now, Mr. Jones, do you have Commonwealth Exhibit Number 69, is that still there, the plea bargain agreement?

A Yes, it is.

Q Okay. Let's go back up to the top of that where it says part one. Do you see that?

A Yes, I do.

Q And it says, quote, "The Defendant currently stands charged with murder, Indictment Number One." Do you see that?

A Yes, I do.

Q What degree or what level of murder were you charged with at that time?

THE COURT: That time being –

MR. ROGERS: That time being in August or September, early September, 1997.



[203] THE WITNESS: First degree.

BY MR. ROGERS:

Q First degree?

A Yes, sir.

Q How long had you had the first degree murder charge?

A I guess since this. I can't recall.

Q Well, let me ask you this, Mr. Jones. You, at one time, were charged with capital murder, is that true, sir?

A That is correct.

Q And you were charged with capital murder when you were down in the low Court, the General District Court?

A I guess so.

Q Okay. And when you were indicted in the Circuit Court, that was in York County, you were indicted for capital murder?

A That is correct.

Q And by the time of this agreement, were you still charged with capital murder?

A I can't recall.

Q Can't recall?

A Not by the time, no.

Q Not by the time. If you look over on [204] the third page of that, sir, it says – does it say down on the third page, agreed to this 5th day of September, 1997?

A Yes, it do.

Q All right. And back on page, part one, when it says stands charged with murder, Indictment Number One, it does not say whether it's capital murder or first degree or murder in the second degree, is that true?

A No, it don't.

Q Just says murder, Indictment Number One?

A That's what it says.

Q Okay. And the next line says, abduction, Indictment Number Two; robbery, Indictment Number Three; and three counts of use or display firearm in commission of a felony, Indictment Numbers Four, Five, Six, right?

A Yes.

Q So at that time you had those six charges against you?

A I still do.

Q Still do. Okay. Part two, the Commonwealth of Virginia, by and through Eileen M. Addison, Commonwealth's Attorney for York County and the City of Poquoson, and the Defendant, William Alfredic –

[205] is that spelled right?

A No, it's not.

Q Okay. Last name Jones. Is that you?

A That is.

Q Okay. With the advice and consent of his attorneys, Leslie P. Smith, Esquire, and Timothy G. Clancy,



Esquire, hereby agree as follows: And then below that it has subparagraph one: The Defendant – now, who is that referring to?

A Me.

Q Okay. – agrees to plead guilty to all six of the indictments referred to in part one of the agreement. The Defendant also agrees that the Circuit Court for York County and the City of Poquoson has jurisdiction over these charges, and if presented the Commonwealth's evidence would be sufficient to prove the Defendant's guilt to each charge beyond a reasonable doubt.

Is that what it says?

A That's what it says.

Q So what – is it your understanding that that says there was enough evidence to convict you of all six of those charges?

A Yes.

Q Okay. Subparagraph two: The [206] Defendant agrees to fully cooperate and be truthful with the Commonwealth Attorney's Office for the County of York and City of Poquoson and the investigators and other personnel of the York County Sheriff's Department and provide all information known to the Defendant relating in any fashion to the abduction, robbery and murder of Eric Michael Nesbitt on or about August 17th, 1996. Among other things, the Defendant agrees to, colon, and that finishes that page, is that right?

A Yes, it does.

Q Okay. Top of the second page, subparagraph A. This is what you agreed to do, is that right?

A Yes, sir.

Q A, testify truthfully and completely in any trial or other criminal proceedings brought against Daryl Renard Atkins.

Is that the Defendant seated here?

A Yes, it is.

Q Okay. For the criminal charges referenced in part one of this agreement and, B, be reasonably available for such pretrial conferences and interviews as the Commonwealth may deem appropriate.

Then paragraph three under that: It is further agreed and understood between the Commonwealth [207] of Virginia, the Defendant, William Alfredic Jones, and his attorneys, Leslie P. Smith, Esquire, and Timothy G. Clancy, Esquire, that if it becomes apparent for whatever reason or from whatever source that the Defendant has failed to be completely truthful and/or has failed to fully cooperate with the Commonwealth as required by this agreement, the Commonwealth shall be released from all obligations imposed upon it by the terms of this agreement. Whether the Defendant has breached any provision of this agreement shall be determined by the Court in an appropriate proceeding, at which all of the Defendant's disclosures shall be admissible. The Commonwealth shall be required to prove a breach of this agreement by a preponderance of the evidence.

Is that what that says?



A Yes, it is.

Q Let me ask you this, Mr. Jones, if you know, and you may or may not. Do you know what burden of proof there is in a criminal case?

A No, I do not know.

Q Don't know? Have you ever heard the phrase, beyond a reasonable doubt?

A Yes, I did.

Q What does that mean?

A It's beyond a reasonable doubt.

[208] Q Okay. You think that's more or less than preponderance of the evidence?

A More.

Q More. Okay.

Four: If the Defendant abides by the terms of this agreement, the Commonwealth shall not utilize any truthful information provided by the Defendant, pursuant to this agreement, against the Defendant in any other criminal proceeding in York County, Virginia, except in a prosecution for perjury or perjury-related offense. If the Defendant violates any provision of this agreement, however, it is specifically understood and agreed that the Commonwealth shall have the right to utilize all information given by the Defendant, together with any derivatives thereof, for such purposes as the Commonwealth deems advisable.

And that's the end of part two. Is that right, sir?

A Yes, it is.

Q Okay. Part three. In exchange for the Defendant's cooperation, as described above, and upon the Defendant's complete performance of the terms of this agreement, the Commonwealth agrees to: Subparagraph one, move the Court to vacate its finding of guilt on Indictments Number Two, Three, Five and Six.

[209] What was supposed to be dropped, to your understanding, Mr. Jones, if you completely perform in accord with the terms of the agreement?

A Two, three, five and six.

Q Do you know what those charges are?

A Yes, I do.

Q What are they?

A Robbery, abduction, and two firearm charges.

Q Okay. Do you know what the maximum sentences are on robbery and abduction?

A Life.

Q Life on each one, isn't it?

A Yes, it is.

Q And the firearms charges, five years apiece?

A I think so.

Q Okay. Paragraph two, subpoena an investigator, the Commonwealth agrees to, two, subpoena an investigator for the York County Sheriff's Department to testify regarding the Defendant's cooperation with the Commonwealth, pursuant to this agreement, and asks the



sentencing judge to consider that cooperation favorably imposing sentence on the Defendant.

Now, what does that statement mean to [210] you, sir?

A Excuse me?

Q What does that statement, paragraph two, that I just read, what does that mean to you?

A For the judge be a little lenient.

Q The judge be a little lenient. And somebody from the Sheriff Department going to do what?

A I don't recall.

Q Okay. That finishes part three, is that right?

A Yes, it does.

Q Okay. Part four. It is lastly agreed and understood that this agreement extends only to the charges arising from the abduction, robbery and murder of Eric Michael Nesbitt on or about August 17, 1996, as set forth in Docket Number 8230, now pending before the Circuit Court for York County and the City of Poquoson, and in no way extends to any other case against the Defendant, if any should exist. This is the only agreement between the Commonwealth of Virginia and William Alfredic Jones concerning his cooperation in this matter, and there are no other agreements, deals, bargains or understandings that modify or alter this agreement.

Part five. In accordance with the provisions of Subparagraph C-1-C of said Rule 3A:8, the [211] Commonwealth and the Defendant have agreed to jointly move

the Court to order the preparation of a presentence report by the Parole and Probation Officer of the York-Poquoson Circuit Court, and each reserves the right to argue the appropriate disposition of these cases at the sentencing hearing. All parties hereto understand and agree that the Court is not bound by and need not impose a sentence within the sentencing guidelines range but may impose any sentence allowed by law. The Defendant understands that any estimate of the probable sentencing range under the sentencing guidelines that the Defendant may have received from the Defendant's Counsel, the Commonwealth or any other source is, at most, a prediction and not a promise and is not binding on the Court. The Commonwealth makes no promise or representation regarding what sentence the Defendant will receive, and the Defendant agrees that he cannot withdraw his guilty pleas based on the actual sentence received.

Does that end that paragraph, sir?

A Yes, it do.

Q And then three, four lines in bold type, I have read and reviewed the terms of the foregoing agreement and agree to abide by its terms. I understand the consequences of my failure to do so and am doing so freely and voluntarily.

[212] What is the consequence, as you understand it, Mr. Jones, of your failure to do so?

A All the charges will be stand [sic] for.

Q All six charges, right?

A That is correct.



Q Is that your signature down on the top line right under agreed to this 5th day of September, 1997?

A Yes.

Q And whose signature below that?

A Leslie Smith.

Q Smith. Okay. And he's one of your attorneys?

A Yes, he is.

Q Did he sign this in your presence?

A Yes, he did.

Q And the last line down at the bottom, whose signature is that?

A Eileen M. Addison.

Q And was that signed by her in your presence?

A Yes, it was.

MR. ROGERS: Now, if the Court please, at this time, I would move – I don't know if it has been introduced – it has been? Okay.

[213] William A. Jones – Redirect

THE COURT: 69.

MR. ROGERS: 69. Thank you.

BY MR. ROGERS:

Q Mr. Jones, one other question. When is your sentencing scheduled in this Court?

A February 26th.

Q Of 1998?

A Yes.

Q So it comes up in a couple of weeks?

A Yes, it do.

Q Does this agreement have any effect on the truthfulness of your testimony, Mr. Jones?

A No, it do not.

Q You would testify truthfully regardless, is that right?

A That is correct.

MR. ROGERS: That's all the questions I have of this witness, your Honor.

THE COURT: Redirect?

MS. ADDISON: Thank you, your Honor.

REDIRECT EXAMINATION

BY MS. ADDISON:

Q Mr. Jones, what, if you know, is the [214] maximum penalty for first degree murder?

A Life in prison.

Q How much education have you had?

A Twelfth grade.

Q How long ago was that?



A Ninety-eight – '89, excuse me. '89.

Q Did you graduate from high school?

A Yes, I did.

Q Did anyone explain that agreement that Mr. Rogers just read to you, did anyone explain it to you?

A My lawyers.

Q Was that before or after you signed it?

A Before.

Q Did anyone tell you what to say when you testified?

A No, they did not.

Q Why are you testifying?

A One thing, just so Mr. Nesbitt's family know what really happened. And the other is because of my mother. She told me to. And my father, before he died, told me to testify.

Q When did your father die?

A August 16th, '97.

Q Do you recall when you learned about [215] Mr. Atkins' statement to police?

A No, I can't recall.

Q Do you recall whether or not it was before or after the statement that you gave to Investigator Lyons in August of 1997?

A It was before.

(The attorneys for the Commonwealth conferred.)

BY MS. ADDISON:

Q In answer to Mr. Rogers' question about whether or not you had seen an interview Daryl Atkins gave to a television reporter, did you ever see that?

A No, I did not.

Q How did you find out that Mr. Atkins had given a statement to the police?

A I believe through my lawyer.

Q Directing your attention again back to the interview you gave to Investigator Lyons in August of 1997, Mr. Rogers asked you about a statement you gave that Mr. Atkins, you thought, had the gun in his left hand?

A That is correct.

Q Do you recall him asking you that? Do you recall being asked at that time if you ever get confused knowing your left from your right?

[216] A Yes, it was asked.

Q And what was your response?

A I said yes, especially when I'm nervous.

Q Are you nervous today?

A Yes, I am.

MS. ADDISON: I would ask if I might have Commonwealth's Exhibit, I believe it's 3, the ATM, if you would set that up there.



THE COURT: The photograph, I think it's on the bottom, Sergeant. Check on the back of it. Set it up on the easel, will be fine. All right. Thank you.

BY MS. ADDISON:

Q You identified that earlier, and the people in that picture?

A Yes.

Q Does that picture show where the gun was at the time?

A Yes, it did.

Q Where is that?

A Mr. Atkins got it.

Q Can you point out on that picture where it is?

A Yes (indicating).

[217] MR. ROGERS: May I approach, your Honor?

THE COURT: Yes, you may.

Can the jury see where he pointed?

THE JURY: Yes.

THE COURT: I was blocked, I couldn't see.

Use the pointer, please.

BY MS. ADDISON:

Q Can you tell from that picture, Mr. Jones, whether Mr. Atkins has the gun in his left hand or his right hand?

A He has it in his right.

Q Does that appear to be accurate, the way you recall it?

A Yes, it do.

Q What do you recall about which hand he had the gun in after you got out of the truck and came around the back of the truck?

A Like I said, I really can't remember because I was distressed and distraught and stuff, but I recall it was in his right hand – his left hand.

Q Different from the picture, or the same?

A Like I say, I can't recall.

[218] Q You said you were distraught. Why were you distraught?

A First of the shooting and stuff and just all the noise and hollering and stuff.

Q You testified earlier that before you got out of the truck you could see Mr. Nesbitt?

A Yes, I did.

Q And where was he?

A About five feet away from the truck, from the door.

Q Do you recall how he was positioned at that time?

A His back was towards me.



Q Was he standing or down on the ground?

A He was up.

Q When you tried to get the door open, could you see what he was doing or where he was?

A No, I couldn't. I was concentrating on the door at that time.

Q And when you were going out through the window, could you see what Mr. Nesbitt or what Mr. Atkins were doing or where they were?

A No, I could not.

Q When you were still on the driver's side of the truck, before you came around the back, could [219] you see where they were or what they were doing?

A No, I could not.

Q When was the first time you could see them again?

A When I got around the truck.

Q Do you recall if their position was the same or different than when you had seen it last?

A Mr. Eric Nesbitt was on the ground. Mr. Atkins, he was –

MR. ROGERS: Your Honor, that wasn't responsive to the question. Was it the same or different position, the same or different than what it was previously, and he went off to different things, so he did not answer that question, your Honor.

THE COURT: All right. It calls for one word answer.

BY MS. ADDISON:

Q Was it the same or different from where you had seen them before you got out of the truck?

A No.

Q Was it the same or different?

A Was it different? Yes, it was.

Q How was it different?

A Mr. Nesbitt was on the ground. Mr. Atkins was over top of him like.

[220] Q In response to Mr. Rogers' question, you said that you did not tell your wife or your mother anything about this incident. Why did you not do that?

A On advice of my lawyers, do not discuss the case with anybody.

Q Did you tell anyone else?

A No, I did not.

Q When asked by Mr. Rogers if you'd seen Commonwealth's Exhibit Number 5, that map on the easel behind you, you said you had seen it two times in the Courtroom. Had you ever seen it before then?

A No, I have not.

Q If you would, directing your attention to that – to that map, if you could take the photo down.



THE COURT: That's Exhibit 5?

MS. ADDISON: Yes, sir, Commonwealth's Exhibit Number 5.

BY MS. ADDISON:

Q Mr. Jones, having been told or learned what those streets are, were you familiar with the streets before you ever saw that map?

A I knew the street by the Naval Weapons Station.

Q Where is that on there, if you know?

A I believe it's right here [221] (indicating).

THE COURT: The witness is pointing to what appears to be a dark line in the upper left-hand portion of the exhibit, running from left to right.

BY MS. ADDISON:

Q And how is it that you knew that street by the Naval Weapons Station?

A I didn't know the name, but I used to travel there from Gloucester to Williamsburg.

Q When did you do that?

A From '92 to '91, something like that.

Q In answer to Mr. Rogers' question, you said that you did not go back and check on or touch Mr. Nesbitt before you left the area where he had been shot. Why didn't you do that?

A Well, he wasn't moving or anything. thought he was dead, and I've just got this thing about touching